

**City of Connell, Washington
CITY COUNCIL
PRELIMINARY AGENDA**

REGULAR MEETING

6:00 PM

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS
5. CONSENT CALENDAR

All matter listed within the Consent Calendar have been distributed to each member of the Connell City Council for reading and study, are considered to be routine, and will be enacted by one motion of the Council with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Calendar and placed on the Regular Agenda by request.

- a) Minutes of the Regular Council Meeting June 5, 2017
- b) Accounts payable 6/19/17 for \$96,212.94
- c) BNSF Pipeline License

6. PRESENTATIONS FOR COUNCILMEMBERS
7. APPROVAL OF AGENDA

ORDER OF BUSINESS

8. RESOLUTION NO. 2017-09 - STIP 2018-2023
9. ORDINANCE NO. 978-2017 – Updating Parking Regulations
10. ORDINANCE NO. 980-2017- Closing Fund 415
11. RESOLUTION NO. 2017-10 – FEMA Designation of Applicant’s Agent
12. RESOLUTION NO. 2017-11 – Master Fee Schedule Amendment Park & Rec Fees – Swim Team Discussion
13. July 4th Pool Can drive
14. PUD Agreement for Utilization of Street Light Facilities
15. WA State Dept of Transportation Amendment to Agreement
16. Extension of Fire Chief Contract

17. COMMITTEE, CITY ADMINISTRATOR, AND DEPARTMENT REPORTS
18. EXECUTIVE SESSION
19. CITIZEN COMMENT/NON-AGENDA ITEMS
20. CITY COUNCIL CLOSING REMARKS
21. ADJOURNMENT

The public is welcome and encouraged to attend this meeting. The City of Connell wishes to provide reasonable access to all public meetings for individuals with disabilities. Please contact the City Clerk at least three business days prior to the meeting for accommodations to be arranged.

MEETING OF THE CITY OF CONNELL, WASHINGTON
CONNELL, FRANKLIN COUNTY, WASHINGTON
June 5, 2017

The regular semi-monthly meeting of the Connell City Council was called to order by Mayor Blackwell at 6:02 pm in the City Hall and was opened with the Pledge of Allegiance.

ROLL CALL

PRESENT: Mayor Bruce Blackwell, Councilmembers: Ray Minor, Kathie Silva, Rhonda Quinton, and Joe Escalera.

EXCUSED: Councilmember Minor moved to excuse Mayor Pro Tem Huber. Councilmember Quinton seconded motion. Motion carried unanimously.

STAFF: City Administrator Maria Peña, City Clerk/Treasurer Rose Courneya, Public Works Director Larry Turner, Chief of Police Chris Turner, Fire Chief Chris Schulte, and City Attorney Dan Hultgrenn.

VISITORS: Miss Connell 2017; Madison Knight, Heather Hawkins, Kara Booker, and Kelly Knight, and Franklin County Graphic; Katherine Bingham Trowbridge.

Mayor Blackwell temporarily appointed Councilmember Kathie Silva to finance committee

PRESENTATION

The Miss Connell 2017 girls presented Councilmembers with information on the Miss Connell 2017 program and gave Councilmembers a copy of the handouts they pass out at each parade to promote Connell. Councilmembers were also given a copy of the parade schedule for 2017. The Miss Connell girls thanked Councilmembers for their support.

CONSENT CALENDAR

Motion: Councilmember Silva moved to approve the Consent Calendar as listed:

- a) Minutes of the Regular Council Meeting May 15, 2017
- b) Accounts payable 6/5/17 for \$79,825.19
- c) Check Register 6/1/17 for \$203.34
- d) Payroll Register 5/15/17-5/19/17 for \$56,543.52
- e) Payroll Register 5/31/17- 6/05/17 for \$90,623.38

Councilmember Quinton seconded motion. Motion carried unanimously.

APPROVAL OF AGENDA

Motion: Councilmember Minor moved to approve the agenda as presented. Councilmember Silva seconded motion. Motion carried unanimously.

ORDER OF BUSINESS

PUBLIC HEARING SIX-YEAR TRANSPORTATION IMPROVEMENT PLAN 2018-2023

Mayor Blackwell recessed the regular meeting at 6:15 pm and opened a Public Hearing to allow for comment on the Six-Year Transportation Improvement Plan (STIP) 2018-2023.

STAFF REPORT: Public Works Director Larry Turner presented a slide show to Councilmembers and explained the changes from the 2017-2022 STIP to the 2018-2023 STIP. Each year the City of Connell was required to prepare and adopt a comprehensive transportation program for six years to qualify for STIP funding for street projects. Mr. Turner had met with the Street Committee on 5/22/2017 to discuss streets and get recommendations on the 2018-2023 STIP plan.

PUBLIC COMMENTS: None

COUNCILMEMBERS COMMENT PORTION OF THE HEARING: None

Mayor Blackwell closed the hearing and opened regular meeting at 6:25 pm.

Motion: Councilmember Quinton moved to approve the 2018-2023 Six-Year Transportation Improvement Plan. Councilmember Minor seconded motion. Motion carried unanimously.

Public Works Director Larry Turner would bring back a resolution with the 2018-2023 STIP to the next council meeting.

BACKHOE-AWARD OF BID

The City of Connell received three sealed bids for the purchase of a new backhoe. The companies entering bids were: Central Machinery Sales, Rowland Machinery and Western States. Central Machinery Sales came in with the low bid of \$112,965.84 (including tax), followed by Rowand Machinery with a bid of \$118,152.00 (including tax) and Western States with a bid of \$129,090.11 (including tax). After examining the bids Central Machinery was eliminated do to not meeting or exceeding the bid specifications. Therefore, Rowand Machinery was the lowest bid with the correct specifications at \$118,152.00.

Motion: Councilmember Minor moved to reject Central Machinery Sales as the lowest bid at \$112,965.84 due to not meeting or exceeding the bid specifications and award Rowand Machinery the lowest bid at \$118,152.00 (including tax) for the purchase of a backhoe. Councilmember Quinton seconded motion. Motion carried unanimously.

RESOLUTION NO. 2017-07- SALE OF LOTS BY TENNIS COURTS

The City of Connell had listed city owned parcels 106680104 and 106680105 located adjacent to the tennis courts for sell with a cost of \$40,000 each a year ago and had a potential buyer. The purchase fell through. Now the city has received a letter of intent to purchase said lots for a total of \$55,000 for both. City Administrator Maria Peña did a comparison of empty residential lots that sold within Connell and found that the purchase price offered was consistent with fair market value.

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Regular Meeting – June 5, 2017

Resolution No. 2017-07 was being presented to councilmember's to authorize the Mayor to sign the purchase and sell agreement between the City of Connell and Jorge Ortiz.

Motion: Councilmember Escalera moved to adopt Resolution No. 2017-07 relating to the sale of parcel 106680104 and 106680105 to Jorge Ortiz for \$55,000.00 and approve the Mayor to sign the purchase and sell agreement. Councilmember Minor seconded motion. Motion carried unanimously.

RESOLUTION NO. 2017-08-SURPLUS OF LAND BY FIRE HALL

Council had previously authorized a letter of Intent for the Franklin County Public Hospital District for the purchase of land that was directly to the west of the Fire Hall. The Hospital District was moving along on the land purchase but prior to being able to complete the transaction for the sale of the land the City needed to declare the land as surplus. Resolution No. 2017-08 was being presented to Councilmembers to approve the real property located on West Elm Street as surplus. Legally described as follows: Commencing at the Northeast corner of the Southeast quarter of Section 36, Township 14 North, Range 31 East, W.M. being a brass cap; thence along the North line of said Southeast quarter South 89°03'04" West for 933.61 feet; thence leaving said North line South 00°45'26" East for 80.00 feet to the South right of margin of Elm street per dedication deed 341758 records of said county; and also being on the West right of way margin of Columbia Avenue shown as U.S. 395 on Striker Addition to the Town of Connell; thence along the South right of way margin South 89°03'04" West for 190.19 feet to the True Point of Beginning; thence leaving said right of way margin South 00°45'26" East for 49.81 feet to the center line of vacated Elm Street per Ordinance number 353; thence North 63°34'40" West for 108.35 feet to the South right of way margin of said Elm Street per dedication deed 341758; thence along said South right of way margin North 89°03'04" East for 96.39 feet to the True Point of Beginning.

Motion: Councilmember Minor moved to adopt Resolution No. 2017-08 declaring the above land description as surplus. Councilmember Silva seconded motion. Motion carried unanimously.

ORDINANCE NO. 977-2017-AMENDING MEETING DATES FOR THE PARK BOARD
City Administrator Peña recommended amending the Connell Municipal Code that related to the Park & Recreation Advisory Board meetings. The language in 2.20.50 stated the Park Board shall meet at a minimum of once a month April through August. Mrs. Peña requested that the language "except through the months of April through August when the board shall meet at a minimum of once monthly" be stricken from the code. Meetings will only be held on an as-needed basis.

Motion: Councilmember Silva move to adopt Ordinance No. 977-2017 amending the meeting dates for the Park & Recreation Advisory Board. Councilmember Quinton seconded motion. Motion carried unanimously.

ORDINANCE NO. 978-2017-UPDATING PARKING REGULATION

City Administrator Maria Peña presented an ordinance for amending the current parking regulations to Councilmembers for discussion. The current code was adopted in 1980 and was not updated after Columbia Avenue was redone. The code provided that most of South

MEETING OF THE CITY OF CONNELL
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Columbia Avenue be designated as parallel parking. When Columbia Avenue was redone in the late 1990's the parking was made wider to accommodate angle parking but the code was not updated. The Street Committee had met and had provided recommendations on the parking regulations. Staff was now requesting input from the Councilmembers as to any additions or deletions they would like to see in the parking regulations. Councilmembers held discussion. City Administrator Maria Peña would make changes as per Councilmembers request and bring the updated Ordinance to the next council meeting.

ORDINANCE NO. 979-2017-CLOSING FUND 416

Clerk/Treasurer Rose Courneya stated the City of Connell had paid off the United States Department of Agriculture (USDA) loan in 2016 and in the beginning of 2017 paid off the Farm Bond. The 416 Water/Sewer Bond redemption fund was being used to make the principal payments and interest payments to the USDA and Farm Bond. Ordinance No. 979-2017 was being presented to councilmember to close Fund 416 due to that debt being paid off.

Motion: Councilmember Silva moved to adopt Ordinance No. 979-2017 closing fund 416 Water/Sewer Bond Redemption Fund. Councilmember Minor seconded motion. Motion carried unanimously

MEETING RECESSED

Mayor Blackwell recessed the regular meeting at 6:18 pm to go into Executive session for 20 minutes to consider the minimum price at which real estate would be offered for sale and to discuss with legal counsel potential litigation.

MEETING RECONVENED

Mayor Blackwell called the regular meeting back to order at 7:40 pm.

Staff Reports were handed out to Councilmembers.

City Administrator Maria Peña thanked Clerk/Treasurer Rose Courneya for completing the Annual Report and getting it submitted to the State Auditors on time.

There being no further business before the City Council of Connell Mayor Blackwell adjourned the meeting at 7:49pm

ATTEST: _____
Rose Courneya, Clerk/Treasurer

Bruce Blackwell, Mayor

ACCOUNTS PAYABLE

City Of Connell
MCAG #: 0286

As Of: 06/19/2017

Time: 16:12:22 Date: 06/16/2017
Page: 1

Accts Pay #	Received	Date Due	Vendor	Amount	Memo
16960	06/19/2017	06/19/2017 1974	Aquatic Specialty Services, Inc.	16,119.20	Pool Filter/ Filter Sand
16956	06/19/2017	06/19/2017 92	B/F Health Dist. Dept.	1,091.00	Water/WW Samples
16947	06/19/2017	06/19/2017 2625	Bank of America/EFT, Merchant Services	412.49	May
16942	06/19/2017	06/19/2017 4710	Barragan, Ivan	107.00	Mileage Reimbursement- Ivan Barragan. Yakima Training On 6/7/17
16932	06/19/2017	06/19/2017 80	Basin City Auto Parts	53.99	Fire Dept Power Pac
16950	06/19/2017	06/19/2017 79	Basin Disposal Inc.	194.71	Pioneer Park And Pw Shop
16949	06/19/2017	06/19/2017 3849	Blackwell, Bruce A.	58.41	Reimbursement To Mayro For Travel In POV And Meal
16976	06/19/2017	06/19/2017 118	Budget Print Center Inc.	225.07	Buisness Cards
16948	06/19/2017	06/19/2017 155	City Of Connell	15,580.17	Fire Suppression, Utility Bills, Utility Taxes
16951	06/19/2017	06/19/2017 155	City Of Connell	50.00	Pool Change
16933	06/19/2017	06/19/2017 180	Connell Grange Supply Co.	71.93	Fire Dept Small Tools/Equipment/Facilities
16971	06/19/2017	06/19/2017 180	Connell Grange Supply Co.	1,244.75	Parts & Fuel
16975	06/19/2017	06/19/2017 180	Connell Grange Supply Co.	6.45	Keys
16931	06/19/2017	06/19/2017 656	Connell Oil Inc./CO-Energy	136.66	Fire Dept Fuel Consumed
16958	06/19/2017	06/19/2017 656	Connell Oil Inc./CO-Energy	1,119.12	Fuel
16957	06/19/2017	06/19/2017 217	Coyote Ridge Corrections	903.75	Inmate Work Crew
16959	06/19/2017	06/19/2017 1820	Desmarais Excavation, Nick	810.00	C-900 Water Pipe
16941	06/19/2017	06/19/2017 3640	Devfuzion, Rockwalla IT LLC	1,400.00	Network Support And Backup
16969	06/19/2017	06/19/2017 4714	Environmental Systems Research Institute	2,700.00	GIS Annual License Fee
16961	06/19/2017	06/19/2017 1937	Farmers Electric II, LLC	6.09	WW Valves
16962	06/19/2017	06/19/2017 4490	Fastenal	224.65	Misc. Fasteners
16939	06/19/2017	06/19/2017 2167	Flying Colors	693.02	Uniform Shirts For Clerk/treasurer Office And Police Department
16965	06/19/2017	06/19/2017 2167	Flying Colors	56.95	Staff Shirts
16974	06/19/2017	06/19/2017 284	Franklin Co Corrections	82.43	May Inmate Medical
16954	06/19/2017	06/19/2017 292	Franklin Co Pud	24,676.52	MAY 2017 Electricity Bills- PUD
16943	06/19/2017	06/19/2017 298	Franklin Co Treasurer	65.92	Criminal Victim
16953	06/19/2017	06/19/2017 4711	Garcia, Miguel	900.00	CC Deposit Refund From Event Dat 06/03/2017
16977	06/19/2017	06/19/2017 315	Gimmaka Enterprises Inc.	60.00	Car Wash Quarters
16970	06/19/2017	06/19/2017 176	Greater Connell Chamber of Commerce	2,500.00	Fireworks
16937	06/19/2017	06/19/2017 4436	Intermedia.net Inc.	121.27	Voip
16978	06/19/2017	06/19/2017 3090	Jiffy Car Wash, Inc.	50.87	Car Washes
16972	06/19/2017	06/19/2017 3918	Jones Lang LaSalle Brokerage, Inc., Permit Service	4,443.00	Franklin St Water Line Contract Fee
16955	06/18/2017	06/19/2017 2803	Joyner, Monty	117.70	Mileage Reimbursement For Personal Vehicle Use To Attend Training
16963	06/19/2017	06/19/2017 4050	KCDA Purchasing Cooperative	215.55	Janitorial Supplies
16985	06/19/2017	06/19/2017 4289	Knutsen, Kendra	82.64	1028.30 - 533 EDISON E. East Meter Refund Of Utility Moved Out And Over Paid

ACCOUNTS PAYABLE

City of Connell
MCAG #: 0286

As Of: 06/19/2017

Time: 16:12:22 Date: 06/16/2017
Page: 2

Accts Pay #	Received	Date Due	Vendor	Amount	Memo
16936	06/19/2017	06/19/2017	400	776.00	Meetings, Zambelit Request, And Review Of Grant
16979	06/19/2017	06/19/2017	405	50.00	Onna Public Records Training Registration
16980	06/19/2017	06/19/2017	4328	492.75	Portable Radio Mics
16964	06/19/2017	06/19/2017	442	147.39	Master Keys
16966	06/19/2017	06/19/2017	4078	384.92	PPE Equipment
16982	06/19/2017	06/19/2017	2147	4,276.80	Chlorine
16981	06/19/2017	06/19/2017	4158	315.90	Backhoe Rental
16988	06/19/2017	06/19/2017	1013	68.53	150.00 - 352 ALMIRA N. Utility Reimbursement For Sale Of House
16934	06/19/2017	06/19/2017	233	6,350.67	May Excise Tax
16952	06/19/2017	06/19/2017	4454	30.00	CC Deposit Refund From Event Date 06/09/2017
16967	06/19/2017	06/19/2017	3633	999.91	Internet For Shop & WW Plant
16938	06/19/2017	06/19/2017	3412	32.00	Safekeeping Fees
16935	06/19/2017	06/19/2017	659	116.00	Post Office Box
16968	06/19/2017	06/19/2017	665	15.48	Utility Locates
16983	06/19/2017	06/19/2017	4017	949.05	Cell Phone Bill
16945	06/19/2017	06/19/2017	695	3,849.67	State Remittance For May
16973	06/19/2017	06/19/2017	3440	36.00	CPL Fingerprint Background Check
16940	06/19/2017	06/19/2017	727	511.76	Monthly Lease Fee
16946	06/19/2017	06/19/2017	2626	228.80	
Report Total:				96,212.94	

CERTIFICATION: I, the undersigned do hereby certify under penalty of perjury, that the materials have been furnished, the services rendered or the labor performed as described and that the claim is a due and unpaid obligation against the City of Connell and that I am authorized to authenticate and certify to said claim.

() Finance Director () Auditing Officer _____ Date: _____
 () Deputy Finance Director



Jones Lang LaSalle Americas, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, Texas 76155
tel +1 817-230-2600

June 1, 2017

City of Connell
Attention: Mr. Larry Turner
PO Box 1200
Connell, WA 99326-1200

17-57747

Dear Mr. Turner:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print two (2) copies execute and **return both copies with original signature** for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

- A check in the amount of \$4,443.00 payable to BNSF Railway Company which covers the contract fee(s).

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional \$1,150.00 with your check.

PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase to \$1,600.00.

Sincerely,

Katrina Salazar

Katrina Salazar
Associate Manager - Permits
Attachment

PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective _____, 2017, (the "Effective Date") by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Licensor") and CITY OF CONNELL, a Washington corporation ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "Drawings and Specifications"), one (1) pipeline, 8 inches in diameter inside a 24 inch steel casing (collectively, the "Pipeline"), across or along Licensor's rail corridor at or near the station of Connell, County of Franklin, State of Washington, Line Segment 0046, Mile Post 110.26 as shown on the attached Drawing No. 69767, dated May 12, 2017, attached hereto as Exhibit "A" and incorporated herein by reference (the "Premises").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry potable water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, the sum of Four Thousand, Four Hundred Forty-Three and No/100 Dollars (\$4,443) as compensation for the use of the Premises.
7. **Costs and Expenses.**
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of Section 8 below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this Section 7.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensor accepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
 - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
 - 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 4 above.
10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. **Construction and Maintenance of the Pipeline.**
- 11.1 Licensee shall notify Licensor's Roadmaster, David Raglin at 5324 East Trent, Spokane, WA 99212, telephone (509) 536-2305, or email david.raglin@bnsf.com, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
 - 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
 - 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
 - 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
 - 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so.

Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular

material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

- 12.3 Any open hole, boring, or well, constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "Indemnitees" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "Liabilities" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "Licensee Parties" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS**

LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
14. **Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**
15. **Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:**
- 15.1 **Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:**
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations
- This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
 - Waiver of subrogation in favor of and acceptable to Licensor.
 - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
 - Separation of insureds.
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,150.

- I elect to participate in Licensor's Blanket Policy;
- I elect not to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.15.6 Other Requirements:

- 15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- 15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.
- 15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.
- 15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.
- 15.6.10 Failure to provide evidence as required by this Section 15 shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.

15.6.13 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- 17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.

- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.**

LIENS AND TAXES

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 21 or any other Section of this License.**

22. **Taxes.** Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "Improvements") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. **Default and Termination.** In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of Section 15, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of Section 26 below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in Section 15.
- 23.2 Should Licensee not comply fully with the obligations of Section 17 regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 23 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. **Surrender of the Premises.**

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under Section 24.1 above (the "Restoration Obligations"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this Section 26 shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 26.2 For purposes of this Section 26, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of Section 26.1 above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "Purported Assignment") to another party (a "Purported Transferee"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of Section 15 above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.
- 26.4 The provisions of this Section 26 shall survive the expiration or earlier termination of this License.
27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2301 Lou Menk Dr. – GOB-3W
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of Connell
PO Box 1200
Connell, WA 99326-1200

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.
29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. **Integration.** This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
33. **Joint and Several Liability.** If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. **Waiver.** The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. **Interpretation.**
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender

include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.,
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155

By: _____
Shane Krueger
Title: Vice President – Permits & Special Projects
Date: _____

LICENSEE:

CITY OF CONNELL, a Washington corporation

PO Box 1200
Connell, WA 99326-1200

By: _____
Title: _____
Date: _____

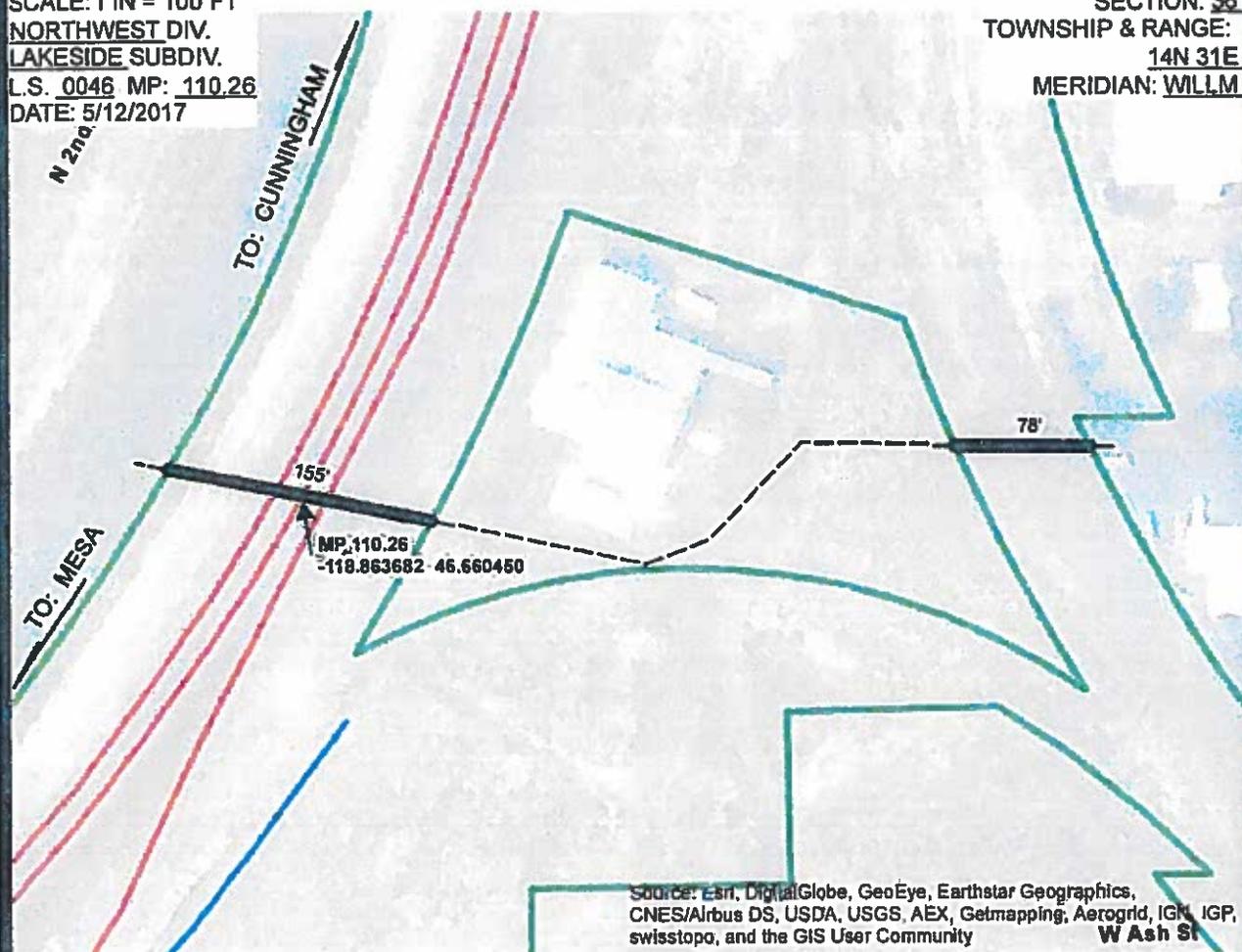
EXHIBIT "A"
 ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND

CITY OF CONNELL



SCALE: 1 IN = 100 FT
 NORTHWEST DIV.
 LAKESIDE SUBDIV.
 L.S. 0046 MP: 110.26
 DATE: 5/12/2017

SECTION: 36
 TOWNSHIP & RANGE:
14N 31E
 MERIDIAN: WILLM



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community
W Ash St

DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	<u>8"</u>	<u>24"</u>	LENGTH ON R/W:	<u>233'</u>	<u>233'</u>
CONTENTS:	<u>POTABLE WATER</u>		WORKING PRESSURE:	<u>60 PSI</u>	
PIPE MATERIAL:	<u>DUCTILE IRON</u>	<u>STEEL</u>	BURY: BASE/RAIL TO TOP OF CASING		<u>5.5' MIN.</u>
SPECIFICATIONS / GRADE:	<u>AWWA CLASS 350 (350 PSI)</u>	<u>ASTM A36 GRADE B ASTM A53 GRADE B</u>	BURY: NATURAL GROUND		<u>3.5' MIN.</u>
WALL THICKNESS:	<u>0.5"</u>	<u>0.375"</u>	BURY: ROADWAY DITCHES		<u>5.5' MIN.</u>
COATING:	<u>ASPHALTIC OUTSIDE COATING</u>	<u>NONE</u>	CATHODIC PROTECTION		<u>-</u>

VENTS: NUMBER - SIZE - HEIGHT OF VENT ABOVE GROUND -

NOTE: CASING TO BE JACKED OR DRY BORED ONLY

AT CONNELL
COUNTY OF FRANKLIN

STATE OF WA

XLR



MEMORANDUM

DATE: JUNE 19, 2017
TO: MAYOR AND COUNCILMEMBERS
FROM: LARRY TURNER, PUBLIC WORKS DIRECTOR
RE: RESOLUTION #2017-09: 2018-2023 STATE TRANSPORTATION IMPROVEMENT PLAN (STIP)

SUMMARY:

Attached are the following document(s):

- Resolution #2017-09
- 2018-2023 State Transportation Improvement Plan

PREVIOUS ACTION:

The Street Committee met on 5/22/2017 and reviewed the State Transportation Improvement Plan and made recommendation of change to the City Council.

At the 6/05/2017 council meeting, council held a public hearing and approved the changes to the 2018 STIP and moved to have staff prepare a resolution and update the 2018-2023 STIP as presented to council for final approval at the 6/19/17 council meeting.

OPTIONS: 1) Move to approve Resolution #2017-09 for the 2018-2023 STIP 2) Do not approve 3) Defer action to a later date.

RECOMMENDATION: Approve Resolution #2017-09 for the 2018-2023 STIP.

City of Connell, Washington

RESOLUTION NO. 2017-09

**A RESOLUTION OF THE CITY OF CONNELL, WASHINGTON
ADOPTING THE 2018-2023 SIX-YEAR TRANSPORTATION
IMPROVEMENT PLAN.**

WHEREAS, the City of Connell is required to prepare and file with the State of Washington, a Six-Year Transportation Improvement Program to maintain eligibility for certain State Street Funds, and

WHEREAS, the City of Connell has prepared such a program, and held a Public Hearing on June 05, 2017. The Street Program was adopted by the City Council of the City of Connell on June 19, 2017, and

NOW, THEREFORE, be it resolved by the City Council of the City of Connell as follows:

That the 2018-2023 Six-Year Transportation Improvement Program for the City of Connell, a copy of which is annexed thereto, and approved.

ADOPTED by the City Council of the City of Connell and **APPROVED** by the Mayor this _____ day of _____, 2017.

ATTEST:

Bruce Blackwell, Mayor

Rose Courneya, City Clerk Treasurer

APPROVED AS TO FORM:

Dan F. Hultgrenn, City Attorney

INTRODUCED: _____

ADOPTED: _____

APPROVED: _____



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPO/RTPO: BFGC

N Inside

Y Outside

Functional Class	19	Priority Number	1	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
				East Birch Street E. Birch St Columbia Ave to Pioneer Pool Reconstruction, drainage, curbs, gutters and sidewalk on one side.	WA-00822	06/05/17	06/19/17		2017-09	03		0.300	CE	No

Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2018				0	OTHER	65,000	0	65,000
P	CN	2018				0	TIB	778,500	21,500	800,000
Totals						0		843,500	21,500	865,000

Expenditure Schedule		1st	2nd	3rd	4th	5th & 6th
Phase	PE	65,000	0	0	0	0
	CN	800,000	0	0	0	0
Totals		865,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	16	Priority Number	2	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
				East Clark Street E. Clark St. Columbia Ave to Ford Ave Reconstruction, drainage, curbs, gutters and sidewalk on both sides.	WA-00682	06/05/17	06/19/17		2017-09	03	GPSTW	0.510	CE	No

Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2019				0		0	150,000	150,000
P	CN	2019				0	PWTF	1,600,000	0	1,600,000
Totals						0		1,600,000	150,000	1,750,000

Expenditure Schedule		1st	2nd	3rd	4th	5th & 6th
Phase	PE	150,000	0	0	0	0
	CN	1,600,000	0	0	0	0
Totals		1,750,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	16	Priority Number	3	A. PIN/Project No. B. STIP ID C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	G. Structure ID WA-00688	Hearing	06/05/17	Adopted	06/19/17	Amendment	Resolution No.	2017-09	Improvement Type	05	Utility Codes	Total Length	Environmental Type	RW Required	No
				Street Preservation Program City Limit City Limit to City Limit Overlays, seals, ETC.															

Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
S	CN			2018		0		0	35,000	35,000
Totals						0		0	35,000	35,000

Expenditure Schedule		1st	2nd	3rd	4th	5th & 6th
Phase						
CN		35,000	0	0	0	0
Totals		35,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connel
 County: Franklin
 MPO/RTPD: BFCG

Y Outside

N Inside

Functional Class	19	Priority Number	4	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
				South 5th Street Re-Construct Hawthorne to Juniper Reconstruction, drainage, curbs and gutters.	WA-03813	06/05/17	06/19/17		2017-09	04		0.230		No

Funding Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2018		0		0		71,000
P	CN	2018		0	TIB	639,000	0	639,000
Totals				0		639,000	71,000	710,000

Expenditure Schedule Phase	Funding				
	1st	2nd	3rd	4th	5th & 6th
PE	71,000	0	0	0	0
CN	639,000	0	0	0	0
Totals	710,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
County: Franklin
MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	19	Priority Number	5	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	B. STIP ID G. Structure ID	Hearing	06/05/17	Adopted	06/19/17	Amendment	Resolution No.	2017-09	Improvement Type	03	Utility Codes	Total Length	0.330	Environmental Type		RW Required	No
				Hawthorne Street Project Hawthorne St S. Columbia Ave to S. 5th Reconstruction, curbs, gutters, and sidewalk on one side.																	

Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2019		PWTF	0	88,000		88,000	0	88,000
P	CN	2020		PWTF	0	781,800		781,800	10,200	792,000
Totals					0	869,800		869,800	10,200	880,000

Expenditure Schedule		1st	2nd	3rd	4th	5th & 6th
Phase						
PE	88,000	10,200	0	0	0	0
CN	0	781,800	0	0	0	0
Totals	88,000	792,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	19	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description		B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
	6	East Davis Street E. Davis St. Almira to Chelan Reconstruction with drainage, curbs, gutters and sidewalk on both sides.		WA-06685	06/05/17	06/19/17		2017-09	03	C G P S T W	0.170 CE		No

Funding Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2020		0		0	50,000	50,000
P	CN	2020		0	TIB	540,000	10,000	550,000
Totals				0		540,000	60,000	600,000

Expenditure Schedule	Phase					
	1st	2nd	3rd	4th	5th & 6th	Totals
PE	50,000	0	0	0	0	0
CN	550,000	0	0	0	0	0
Totals	600,000	0	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	17	Priority Number	7	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Terminal F. Project Description	B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
				W. Clark St. Chip Seal Columbia Ave to SR 260 Chip Seal from Columbia Ave. to SR 260	WA-08035	06/05/17	06/19/17		2017-09	05		1.100		No

Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
	P	PE	2019			0	TIB	22,000	0	22,000
	P	CN	2019			0	TIB	198,000	0	198,000
				Totals		0		220,000	0	220,000

Expenditure Schedule		1st	2nd	3rd	4th	5th & 6th
Phase	PE	22,000	0	0	0	0
	CN	198,000	0	0	0	0
	Totals	220,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPORTPO: BFCC

N Inside

Y Outside

Functional Class	09	Priority Number	8	A. PIN/Project No. B. STIP ID C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description G. Structure ID WA-06634 South Burke Re-Construct Fir Street to Elm Street Reconstruction with drainage, curbs, gutters and sidewalk on 1 side		Hearing	06/05/17	Adopted	06/19/17	Amendment	Resolution No.	2017-09	Improvement Type	04	Utility Codes	Total Length	0.120	Environmental Type		RW Required	No
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Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2019			0			0	42,000	42,000
P	CN	2019		TIB	0			378,000	0	378,000
Totals					0			378,000	42,000	420,000

Expenditure Schedule		1st	2nd	3rd	4th	5th & 6th
Phase	PE	42,000	0	0	0	0
	CN	378,000	0	0	0	0
Totals		420,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	16	Priority Number	9	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
				Ford Street Extension Ford St Ash Street to N. Columbia Ave New Construction.	WA-00689	06/05/17	06/19/17		2017-09	01		1.300		No

Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2019		0	OTHER	150,000	0	150,000
P	RW	2020		0	OTHER	150,000	0	150,000
P	CN	2021		0	OTHER	2,200,000	0	2,200,000
			Totals	0		2,500,000	0	2,500,000

Phase	Expenditure Schedule				
	1st	2nd	3rd	4th	5th & 6th
PE	150,000	0	0	0	0
RW	0	150,000	0	0	0
CN	0	0	2,200,000	0	0
Totals	150,000	150,000	2,200,000	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
County: Franklin
MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	00	Priority Number	10	B. STIP ID G. Structure ID WA-00691 06/05/17				Hearing	06/19/17	Adopted		Amendment		Resolution No.	2017-08	Improvement Type	06	Utility Codes		Total Length	0.610	Environmental Type		RW Required	Yes
				A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description Ford Ave. Bike Path Extension Ford Ave Clark St. to N. Columbia Ave. Construction and extension of pedestrian/bicycle path.																					

Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
	P	PE		2019		0		0	30,000	30,000
	P	CN		2020		0		0	270,000	270,000
						Totals		0	300,000	300,000

Expenditure Schedule		1st	2nd	3rd	4th	5th & 6th
Phase						
PE		30,000	0	0	0	0
CN		0	270,000	0	0	0
Totals		30,000	270,000	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
County: Franklin
MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	19	Priority Number	11	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
				Birch to Burke Connector Birch St to Burke Ave Construct road across old railroad right of way to connect Birch to Burke.	WA-03814	06/05/17	06/19/17		2017-09	01		0.020		No

Funding

Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2019		0		0	30,000	30,000
P	CN	2019		0	TIB	300,000	0	300,000
Totals				0		300,000	30,000	330,000

Expenditure Schedule

Phase	1st	2nd	3rd	4th	5th & 6th
PE	30,000	0	0	0	0
CN	300,000	0	0	0	0
Totals	330,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	00	Priority Number	12	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Terminal F. Project Description	B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
				Old Railroad right of way path Columbia Ave to Ford Ave Construction of pedestrian/bicycle path.	WA-00686	06/05/17	06/19/17		2017-09	06		0.420		Yes

Funding	Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
	P	PE	2020		0		0	10,200	10,200
	P	CN	2020	BR	173,000		0	16,800	189,800
				Totals	173,000		0	27,000	200,000

Expenditure Schedule	Phase	1st	2nd	3rd	4th	5th & 6th
	PE	10,200	0	0	0	0
	CN	189,800	0	0	0	0
	Totals	200,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
County: Franklin
MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	Priority Number	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
17	13	South Sixth Street Extension S. Sixth St. Clark St. to Elm Street New construction of road and bridge over railway and Equatzel Coulee.	WA-00693	06/05/17	06/19/17		2017-09	01		0.350		Yes

Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2020	STP(S)	300,000		0	0	300,000
P	RW	2021	STP(S)	105,000		0	0	105,000
P	CN	2022	STP(S)	2,595,000		0	0	2,595,000
			Totals	3,000,000		0	0	3,000,000

Phase	Expenditure Schedule				
	1st	2nd	3rd	4th	5th & 6th
PE	300,000	0	0	0	0
RW	105,000	105,000	0	0	0
CN	0	0	2,595,000	0	0
Totals	405,000	105,000	2,595,000	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPO/RTPO: BFCG

Y Outside

N Inside

Functional Class	09	Priority Number	14	B. STIP ID	WA-09018	Hearing	06/05/17	Adopted	06/19/17	Amendment	Resolution No.	2017-09	Improvement Type	04	Utility Codes	Total Length	0.350 CE	Environmental Type		RW Required	No
A. PIN/Project No.				C. Project Title				D. Road Name or Number				E. Begin & End Termini				F. Project Description					
14				Old Town Re-Construct-Phase 1				N. 3rd, 4th, 5th & Franklin				100 Blk of N. 3rd to 200 Blk of N. 5th				Reconstruct, drainage, curbs, gutters & sidewalk on one side.					

Funding	Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE		2020		0		0		60,000
P	CN		2020		0	TIB	1,080,000		1,140,000
				Totals	0		1,080,000		1,200,000

Expenditure Schedule	Phase	1st	2nd	3rd	4th	5th & 6th	Totals
PE		60,000					60,000
CN		1,140,000					1,140,000
Totals		1,200,000					1,200,000



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 MPO/RTPO: BFCG

N Inside

Y Outside

Functional Class	09	Priority Number	15	B. STIP ID		Hearing	06/05/17	Adopted	06/19/17	Amendment	Resolution No.	2107-09	Improvement Type	04	Utility Codes	Total Length	0.500 CE	Environmental Type		RW Required	No
				G. Structure ID		WA-09019															
				A. PIN/Project No.		Old Town Reconstruct-Phase 2															
				C. Project Title		N.3rd,4th,5th & Borah															
				D. Road Name or Number		200 N. 3rd to 300 N. 5th															
				E. Begin & End Termini		Reconstruct, drainage, curbs, gutters & sidewalk on one side.															
				F. Project Description																	

Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2021			0	0		0	85,000	85,000
P	CN	2021		TIB	0	1,530,000		1,530,000	85,000	1,615,000
Totals					0	0		1,530,000	170,000	1,700,000

Expenditure Schedule		1st	2nd	3rd	4th	5th & 6th
Phase	PE	85,000	0	0	0	0
Phase	CN	1,615,000	0	0	0	0
Totals		1,700,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
 County: Franklin
 #PORTPD: BFCG

N Inside

Y Outside

Functional Class	00	Priority Number	16	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	B. STIP ID G. Structure ID	Hearing	06/05/17	Adopted	06/19/17	Amendment	Resolution No.	2017-09	Improvement Type	06	Utility Codes	Total Length	0.100	Environmental Type		RW Required	Yes
				SR 260 Pedestrian Crossing SR 260 Gum Sl to Hawthorne Construct a pedestrian bridge across SR 260.	WA-00695																

Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
	P	PE		2021		0		0	60,000	60,000
	P	CN		2021	OTHER	0		540,000	0	540,000
				Totals		0		540,000	60,000	600,000

Expenditure Schedule		1st	2nd	3rd	4th	5th & 6th
Phase						
PE		60,000	0	0	0	0
CN		540,000	0	0	0	0
Totals		600,000	0	0	0	0



Six Year Transportation Improvement Program From 2018 to 2023

Agency: Connell
County: Franklin
MPORTPO: BFCG

N Inside

Y Outside

Functional Class	07	Priority Number	17	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	Columbia Ave Chip Seal Columbia Ave SR 260 to US 395 Columbia Ave from SR 260 to US 395. Chip Seal.	B. STIP ID G. Structure ID	WA-00684	Hearing	05/15/17	Adopted	05/15/17	Amendment	Resolution No.	2017-06	Improvement Type	05	Utility Codes	Total Length	1.840 CE	Environmental Type		RW Required	No
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Funding		Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
S	CN			2018	STP(R)	184,508		0	70,000	254,508
Totals						184,508		0	70,000	254,508

Expenditure Schedule		Phase	1st	2nd	3rd	4th	5th & 6th
CN			254,508	0	0	0	0
Totals			254,508	0	0	0	0

Grand Totals for Connell		Federal Funds	State Funds	Local Funds	Total Funds
		3,357,508	11,040,300	1,166,700	15,564,508



MEMORANDUM

DATE: JUNE 19, 2017
TO: MAYOR AND COUNCILMEMBERS
FROM: MARIA PEÑA, CITY ADMINISTRATOR
RE: ORDINANCE NO. 978-2017 – UPDATING PARKING REGULATIONS

Attached please find updated Ordinance No. 978-2014 that reflects the following changes to Chapter 10.20 of the Connell Municipal Code:

Under 10.20.010 Angle Parking.

Item (6) The north side of Adams Street in front of the Connell Heritage Museum, has been added.

Under 10.20.060 Parking for certain purposes prohibited.

Item (6) No vehicle shall be parked on any street in the City in violation of posted time limits as established by the chief of police with the consent of the City council, has been added.

Addition of clarification as to sections being repealed.

I believe that by adopting this ordinance it will provide consistency between the City's code and actual parking practices along Columbia Ave. We expect that parking stripes will be painted prior to the Fall Festival.

Recommendation: Council move to approve Ordinance No. 978- 2017 Updating Parking Regulations.

CITY OF CONNELL, WASHINGTON

ORDINANCE NO. 978-2017

**AN ORDINANCE OF THE CITY OF CONNELL, WASHINGTON AMENDING
CHAPTER 10.20 OF THE CONNELL MUNICIPAL CODE ESTABLISHING
PARKING GUIDELINES IN THE CITY OF CONNELL.**

WHEREAS the City Council of the City of Connell, Washington finds that it is necessary to update the established parking guidelines for the City of Connell;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONNELL,
WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:**

Section 1: Chapter 10.20 of the Connell Municipal Code is hereby adopted as follows:

**Chapter 10.20
PARKING**

Sections:

- 10.20.010 Angle parking.**
- 10.20.020 Parallel parking.**
- 10.20.030 Pavement markings.**
- 10.20.060 Parking for certain purposes prohibited.**
- 10.20.070 Columbia Avenue—Parallel parking.**
- 10.20.090 Columbia Avenue—Double parking.**
- 10.20.110 West Cedar Street—No parking.**
- 10.20.120 Signing—Infraction—Impounding.**

10.20.010 Angle parking.

The parking of motor vehicles on the following described portions of public streets, of the city, at an angle of forty-five degrees to the curb, is authorized and required:

- (1) The south side of Franklin Street between Columbia Avenue and the alley lying between Columbia Avenue and Almira Avenue;
- (2) The north side of Adams Street from Columbia Avenue to Almira Avenue;
- (3) East side of Almira Avenue from Adams to Borah Streets;
- (4) Both sides of Borah Street from Columbia Ave to the right-of-way of the BNSF Railway;
- (5) Both sides of Columbia Avenue from Gum Street to Ash Street.
- (6) The north side of Adams Street in front of the Connell Heritage Museum.

10.20.020 Parallel parking.

On all streets other than those mentioned in Section 10.20.010, of the city, every vehicle stopped or parked upon the street or roadway, where there is an adjacent curb, shall be so stopped or parked with the right-hand wheels of such vehicle parallel to, and within twelve inches of the right-hand curb.

10.20.030 Pavement markings.

The public works director shall cause lines to be painted upon the pavement, marking off the parking spaces, or stalls, along certain streets. It is unlawful for any person to park a motor vehicle in any other manner, other than in the stalls as shall be marked upon the pavement by the proper striping.

10.20.060 Parking for certain purposes prohibited.

The parking of vehicles (motorized or not motorized) on city streets and alleys is unauthorized under the following conditions:

- (1) No vehicle or any object or obstruction shall be left in any alley in the city, except for the purpose of loading or unloading, and such vehicle or obstruction shall not be left unattended;
- (2) No commercial and farm vehicle with a maximum gross weight of fourteen thousand pounds or more shall park anywhere on or off the street in a residential zone of the city, except parking on residential streets may be permitted in the course of making deliveries. "Maximum gross weight" means the scale weight of any motor vehicle, truck, truck tractor, trailer or semi-trailer to which shall be added the maximum load to be carried thereon as set by the licensee in his application for a license or as marked on the vehicle, whichever is greater. A street is a residential zone for the purposes of this chapter if any property on either side of the street is in a residential zone; each block of the street will be treated as a separate unit for the purposes of determining whether overnight parking will be permitted;
- (3) No unlicensed vehicle shall be parked upon the streets of the city;
- (4) No obviously inoperable vehicle shall be parked upon a city street for more than twenty-four hours. An obviously inoperable vehicle for the purposes of this chapter is a vehicle that is either missing parts that would prevent it from moving under its own power, has flat tire(s), or is in a condition that would make it illegal to operate on a public highway;
- (5) No boat, motor home, camp trailer, trailer, fifth wheel, pickup camper, snowmobile, or utility trailer shall be stored or maintained on any public street, right-of-way, or other public area; except such items may be parked in public rights-of-way in front of an owner's property for a period of seventy-two hours in any given two-week period for loading and unloading purposes. Guests of the owner may temporarily park in public right-of-way in front of the owner's property for a period of seventy-two hours in any given two-week period if the boat, motor home, camp trailer, trailer, fifth wheel, pickup camper, snowmobile, or utility trailer of the guests cannot be accommodated, due to size, on the owner's driveway. The chief of police or his/her designee may issue a special permit to allow a visitor to temporarily park in a public right-of-way for up to seven days.
- (6) No vehicle shall be parked on any street in the City in violation of posted time limits as established by the chief of police with the consent of the City council.

10.20.070 Columbia Avenue—Parallel parking.

All vehicles parked on Columbia Avenue within the city limits, except for those places described above, shall be parked parallel to and facing in the direction of normal, lawful travel. Wherever there is a curb upon Columbia Avenue vehicles shall be parked with the right wheel not more than twelve inches from the curb.

10.20.090 Columbia Avenue—Double parking.

It is unlawful to park more than one vehicle between the curb or curb line and traffic lane or travel portion of the street upon Columbia Avenue within the city limits.

10.20.110 West Cedar Street—No parking.

It is unlawful to park a motor vehicle or trailer on the south side of West Cedar Street from its intersection with Columbia Avenue west to its termination between the hours of ten p.m. through six a.m. the next day.

10.20.120 Signing—Infraction—Impounding.

(a) The public works director, in cooperation with the chief of police, shall cause suitable parking restriction signs to be installed upon said streets giving notice to the users thereof of such restrictions.

(b) Violation of any of the terms of this chapter shall be deemed an infraction punishable only by a civil penalty not exceeding five hundred dollars; except that vehicles parked in violation of Section 10.20.060 will be considered and treated as unauthorized vehicles as described in Section 7.06.110, and subject to towing.

Section 2. Sections 10.20.040, 10.20.050, 10.20.80 and 10.20.100 are hereby repealed:

Section 3. Effective Date. This Ordinance shall be in full force and effect five days after passage and publication in the City’s official newspaper.

ADOPTED by the City Council for the City of Connell, Washington this _____ day of June, 2017, and APPROVED by the Mayor this _____ day of June, 2017.

ATTEST:

Bruce Blackwell, Mayor

Rose Courneya, City Clerk/Treasurer

APPROVED AS TO FORM:

INTRODUCED: _____

APPROVED: _____

Dan F. Hultgrenn, City Attorney

ADOPTED: _____

PUBLISHED: _____



MEMORANDUM

DATE: JUNE 19, 2017
TO: MAYOR AND COUNCILMEMBERS
FROM: ROSE COURNEYA, CITY CLERK/TREASURER
RE: FUND 415 WATER/SEWER BOND RESERVE FUND

Fund 415 Water/Sewer Bond Reserve was established as a reserve account by Ordinance No. 721 as required by the Parity Lien Water Bond documents. The long term debt of the Farm Bond has been paid in full so the Fund 415 is no longer needed.

OPTIONS: 1) Move to adopt Ordinance No. 980-2017 closing Fund 415 Water/Sewer Bond Reserve Fund 2) Do not adopt; 3) Defer action to a later date.

RECOMMENDATION: Close Fund 415 Water/Sewer Bond Redemption Fund

CITY OF CONNELL, WASHINGTON

ORDINANCE NO. 980-2017

**AN ORDINANCE OF THE CITY OF CONNELL, WASHINGTON,
CLOSING THE 415 WATER/SEWER BOND RESERVE FUND**

WHEREAS, Fund 415 was created established as a reserve account by Ordinance No. 721 as required by the Parity Lien Water Bond documents,

WHEREAS, the long term debt of the Farm Bond is paid in full and it is therefore not necessary that the 415 Water/Sewer Bond Reserve Fund remain in existence;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONNELL, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1: The City of Connell's Water/Sewer Bond Reserve (415) is hereby closed.

Section 2: This Ordinance shall be in full force and effect five days following the date of its publication in the official newspaper of the City.

ADOPTED by the City Council for the City of Connell, Washington this _____ day of June, 2017, and **APPROVED** by the Mayor this _____ day of June, 2017.

Bruce Blackwell, Mayor

ATTEST:

Rose Courneya, City Clerk-Treasurer

APPROVED AS TO FORM:

Dan F. Hultgrenn, City Attorney

INTRODUCED: _____
ADOPTED: _____
APPROVED: _____
PUBLISHED _____

in the Franklin County Graphic



City of Connell

**EASTERN
WASHINGTON'S
HARVESTLAND**

MEMORANDUM

DATE: JUNE 19, 2017
TO: MAYOR AND COUNCILMEMBERS
FROM: MARIA PEÑA, CITY ADMINISTRATOR
RE: RESOLUTION NO. 2017-10 FEMA DESIGNATION OF APPLICANT'S AGENT

On February 15, 2017 Mayor Blackwell declared a city-wide emergency due to severe weather that caused flooding of the Esquatzel Coulee. Franklin County Board of Commissioners declared a county-wide emergency February 20, 2017. The state of Washington declared a state-wide emergency April 21, 2017 for the incident period of January 30 to February 22, 2017. This has all lead to Public Works Director Turner working with Franklin County Emergency Management and FEMA to help recover some of the cost associated with the severe weather and flooding.

City staff held an applicant debriefing with FEMA and WA Emergency Management, to review the damages and discuss cost recovery. There would be some cost recovery for the flooding that has already been incurred by the City. Cost associated with damage to the streets has been assessed and expected to be expended in the next few months.

The attached resolution allows the Public Works Director and myself to act on behalf of the City in obtaining federal and/or state emergency or disaster assistance funds.

Recommendation: Council move to approve Resolution No. 2017-10 FEMA designation of applicant's agent.

City of Connell, Washington

RESOLUTION NO. 2017-10

**A RESOLUTION OF THE CITY OF CONNELL, WASHINGTON,
DESIGNATION OF APPLICANT'S AGENT.**

**BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF CONNELL,
WASHINGTON:**

Larry Turner, Public Works Director is hereby designated the authorized representative and Maria Peña, City Administrator is designated the alternate for and in behalf of the City of Connell, a public agency established under the laws of the state of Washington.

The purpose of this designation as the authorized representative is to obtain federal and/or state emergency or disaster assistance funds. These representatives are authorized on behalf of the City of Connell to execute all contracts, certify completion of projects, request payments, and prepare all required documentation for funding requirements.

PASSED AND ADOPTED by the City Council of the City of Connell and **APPROVED** by the Mayor this ____ day of _____, 2017.

Bruce Blackwell, Mayor

CERTIFICATION:

I, Rose Courneya, duly appointed and City Clerk Treasurer of the City of Connell do hereby certify that the above is a true and correct copy of a resolution passed and approved by the City Council of the City of Connell on the ____ day of _____, 2017

Rose Courneya, City Clerk Treasurer

Date

APPROVED AS TO FORM:

Dan F. Hultgrenn, City Attorney

INTRODUCED: _____

ADOPTED: _____

APPROVED: _____

**Washington State Military Department
PUBLIC ASSISTANCE GRANT AGREEMENT FACE SHEET**

1. SUBRECIPIENT Name and Address: City of Connell 104 E. Adams PO Box 1200 Connell, WA 99326-1200		2. Grant Agreement Amount: To be determined, based upon approved project worksheets		3. Grant Number: D17-148	
4. SUBRECIPIENT, phone/email: 509-234-6431/ltturner@connellwa.org		5. Grant Agreement Start Date: January 30, 2017		6. Grant Agreement End Date: April 21, 2021	
7. DEPARTMENT Program Manager, phone/email: Gerard Urbas, (253) 512-7402 Gary.urbas@mil.wa.gov		8. Data Universal Numbering System (DUNS): 618129605		9. UBI # (state revenue): 111 000 004	
10. Funding Authority: Washington State Military Department (the "DEPARTMENT"), and Federal Emergency Management Agency (FEMA)					
11. Funding Source Agreement #: FEMA-4309-DR-WA		12. Program Index # 774PC (Federal)/772PE (State)/ 774PD (Admin)	13. Catalog of Federal Domestic Asst. (CFDA) # & Title: 97.036, Public Assistance		14. N/A
15. Total Federal Award Amount: N/A			16. Federal Award Date: N/A		
17. Service Districts: (BY LEGISLATIVE DISTRICT): 9th (BY CONGRESSIONAL DISTRICT): 4th		18. Service Area by County(ies): Franklin County		19. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____	
20. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other _____			21. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency		
22. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____			23. Contractor Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER		
24. BRIEF DESCRIPTION: Presidential Disaster Declaration # FEMA-4309-DR-WA Washington Severe Winter Storms, Flooding, Landslides, and Mudslides. To provide funds to the SUBRECIPIENT for the repair or restoration of damaged public facilities as approved by FEMA in project worksheets describing eligible scopes of work and associated funding. The DEPARTMENT is the Recipient and Pass-through Entity of the Presidential Disaster Declaration # FEMA-4309-DR-WA Washington Severe Winter Storms, Flooding, Landslides, and Mudslides, and FEMA State Agreement, which are incorporated by reference, and makes a subaward of Federal award funds to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT is accountable to the DEPARTMENT for use of Federal award funds provided under this Agreement and the associated matching funds.					
IN WITNESS WHEREOF, the DEPARTMENT and SUBRECIPIENT acknowledge and accept the terms of this Agreement, references and attachments hereto and have executed this Agreement as of the date and year written below. This Agreement Face Sheet, Special Terms and Conditions (Attachment 1), General Terms and Conditions (Attachment 2), Project Worksheet Sample (Attachment 3), Washington State Public Assistance Applicant Manual dated April 21, 2017 (Attachment 4), and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:					
1. Applicable Federal and State Statutes and Regulations		5. Special Terms and Conditions			
2. DHS Standard Terms and Conditions		6. General Terms and Conditions, and,			
3. Presidential Declaration, FEMA State Agreement, and other Documents		7. Other provisions of the contract incorporated by reference.			
4. Statement of Work and/or Project Description as outlined in FEMA approved Project Worksheet(s)					
WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below.					
FOR THE DEPARTMENT:			FOR THE SUBRECIPIENT:		
Signature _____ Dan Swisher, Chief Finance Officer Washington State Military Department		Date _____		Signature _____ print or type name: _____ Date _____	
BOILERPLATE APPROVED AS TO FORM: Dawn C. Cortez (signature on file 10/29/2015) Assistant Attorney General			APPROVED AS TO FORM: _____ SUBRECIPIENT's Attorney Date _____		

**Washington State Military Department
SPECIAL TERMS AND CONDITIONS**

ARTICLE I – KEY PERSONNEL

The individuals listed below shall be considered key personnel and point of contact. Any substitution by either party must be submitted in writing.

SUBRECIPIENT		MILITARY DEPARTMENT	
Name	Larry Turner	Name	Gerard Urbas
Title	Public Works Director	Title	Deputy State Coordinating Officer Public Assistance
E-Mail	lturner@connellwa.org	E-Mail	gary.urbas@mil.wa.gov
Phone	509-234-2701 ext 1239	Phone	(253) 512-7402

ARTICLE II - ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by FEMA applicable to the Presidential Declaration including, but not limited to, all criteria, restrictions, and requirements of the "FEMA State Agreement" published by FEMA and the federal regulations commonly applicable to FEMA grants, all of which are incorporated herein by reference. The Presidential Declaration and the FEMA State Agreement are incorporated in this Agreement by reference.

The SUBRECIPIENT shall comply with the Washington State Public Assistance Applicant Manual dated April 21, 2017 incorporated in this Agreement as **Attachment 4**. The DHS Standard Terms and Conditions are incorporated by reference in this Agreement in Appendix F of the Washington State Public Assistance Applicant Manual dated April 21, 2017.

The SUBRECIPIENT acknowledges that since this Agreement involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The SUBRECIPIENT agrees that it will not hold the DEPARTMENT, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

Federal funding is provided by FEMA and is administered by the DEPARTMENT. Under the authority of Presidential Disaster Declaration number FEMA 4309-DR-WA, the DEPARTMENT is reimbursing the SUBRECIPIENT for those approved eligible costs and activities necessary under the Public Assistance Grant Program during the incident period beginning January 30, 2017 to February 22, 2017. Eligible costs and activities will be identified in Project Worksheets approved by FEMA and a Project Worksheet Sample is incorporated as **Attachment 3**. The DEPARTMENT is also providing Advance Payments to the SUBRECIPIENT where provided by FEMA and required and allowed by law. Any interest earned on advance payments (except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450)) shall be promptly, but at least quarterly, remitted to the DEPARTMENT to be paid to FEMA. The SUBRECIPIENT may keep interest amounts up to \$100 per year for administrative expenses.

A. STATE AND FEDERAL REQUIREMENTS FOR PUBLIC ASSISTANCE GRANTS:

The following requirements apply to all DHS/FEMA Presidential Disasters administered by the DEPARTMENT.

1. FUNDING

The DEPARTMENT will administer the Public Assistance Grant Program, provide Advance payments, and reimburse approved eligible Public Assistance costs to the SUBRECIPIENT that are identified under the auspices of Presidential Disaster Declaration Number FEMA-4309-DR-WA and authorized by and consistent with the Stafford Act (P.L. 93-288, as amended) and applicable regulations.

It is understood that no final dollar figure is committed to at the time that this Agreement is executed, but that financial commitments will be made by amendments to the project application as Project Worksheets are completed in the field and projects are authorized by state and federal officials.

Pursuant to the FEMA-STATE AGREEMENT, FEMA will contribute not less than 75 percent of the eligible costs for any eligible project and 100 percent of the federal indirect costs, up to \$300, as provided for in subsection 3.E. of Article II of this Public Assistance Agreement. The SUBRECIPIENT commits to providing the remaining 25 percent non-federal match to any eligible project that has been identified under the Presidential Disaster Declaration number FEMA-4309-DR-WA, subject to the following exceptions:

DEPARTMENT Match: The Washington State Legislature may authorize the DEPARTMENT to provide a match to the SUBRECIPIENT's non-federal share of eligible projects. Provision of a match by the DEPARTMENT, if authorized by the Washington State Legislature, shall not require amendment of this Agreement. If DEPARTMENT match funds are committed to the non-federal share by the DEPARTMENT pursuant to legislative authorization, the DEPARTMENT will formally notify the SUBRECIPIENT of the match in writing which will include information identifying any related reduction in the SUBRECIPIENT's percentage commitment.

Donated Resources: FEMA will credit the SUBRECIPIENT for the value of certain volunteer labor, donated equipment, and donated materials used in the performance of eligible emergency work – categories A and B, referred to as Donated Resources. The Donated Resources are recognized by FEMA in a Project Worksheet. Donated Resources offset the non-federal share of the eligible emergency work approved in Project Worksheets. For non-state agency SUBRECIPIENTS, the donated resource value will first be applied to the SUBRECIPIENT's non-federal share, and, if a DEPARTMENT match is authorized, any remaining donated resource value will be applied to the DEPARTMENT's share. The value of the Donated Resources are calculated as described in FP 104-009-2 Public Assistance Program and Policy Guide (PAPPG), and are capped at the non-Federal share of approved eligible emergency work costs. The Federal share of the Donated Resources will not exceed the non-federal share of eligible emergency work costs approved in Project Worksheets. Any excess credit can be credited only to other eligible emergency work costs, for the same SUBRECIPIENT in the same disaster. The value of excess donated resources cannot be credited toward or transferred to another eligible SUBRECIPIENT, or toward other State obligations. The DEPARTMENT does not match a FEMA donated resource credit.

The Project Worksheet, sample provided in Attachment 3, is required to be completed by FEMA or State Project Specialists.

2. GRANT AGREEMENT PERIOD

- a. Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall be those activities which occurred during or subsequent to the incident period defined in the FEMA State Agreement, and shall terminate upon completion of the project(s) approved by federal and state officials, including completion of close-out and audit. This period shall be referred to as the "Grant Agreement Period."
- b. The Grant Agreement Period shall only be extended by (1) written notification of FEMA approval of the Grant Agreement Period followed up with a mutually agreed written amendment, or (2) written notification from the DEPARTMENT to the SUBRECIPIENT issued by the DEPARTMENT to address extensions of its underlying federal grant performance period or to provide additional time for completion of the SUBRECIPIENT's project(s).

3. PAYMENTS

The DEPARTMENT, using funds granted for the purposes of the Presidential Disaster Declaration from FEMA, shall issue payments to the SUBRECIPIENT in compliance with the Washington State Public Assistance Applicant Manual dated April 21, 2017 (**Attachment 4**) procedures as follows:

- a. **Small Project Payments:** Payments are made for all small projects to the SUBRECIPIENT upon submission and approval of an A19-1A State of Washington Invoice Voucher to the DEPARTMENT, after FEMA has approved funding through approval of Project Worksheets.

- b. Progress Payments: Progress payment of funds for costs already incurred on large projects minus 10 percent retainage may be made to the SUBRECIPIENT upon submission by the SUBRECIPIENT of an A19-1A State of Washington Invoice Voucher, a letter of request, and a spreadsheet identifying the claimed costs supporting the payment request and approval by the DEPARTMENT.
- c. Improved Projects: Payments on improved projects (capped project) will be pro-rated based upon the percentage of the project that is funded under this disaster grant to the overall project cost. This percentage will be identified when the first payment on the improved project is made. Progress payments will be made as outlined above in Section B.
- d. Final Payment: Final Payment on a large project will be made following submission by the SUBRECIPIENT of a certification of completion on the STATEMENT OF DOCUMENTATION/FINAL INSPECTION REPORT form upon completion of project(s), completion of all final inspections by the DEPARTMENT, and final approval by FEMA. Final payment on a large project will include any retainage withheld during progress payments. Final payments may also be conditional upon financial review, if determined necessary by the DEPARTMENT or FEMA. Adjustments to the final payment may be made following any audits conducted by the Washington State Auditor's Office, the United States Inspector General or other federal or state agency.
- e. The SUBRECIPIENT is eligible to receive a \$300 allowance for federal indirect costs, upon completion and closure of the disaster grant. Documentation of costs involved with attending applicant briefing, participating in the exploratory call, attending the recovery scoping meeting, and participating in the exit meeting should be retained in the SUBRECIPIENT's files to support federal indirect cost reimbursement.
- f. All payment requests shall be made on an A19-1A form, State of Washington, Invoice Voucher. Payments will be made by electronic fund transfer to the SUBRECIPIENT's account.
- g. Federal funding shall not exceed the total federal contribution eligible for Public Assistance costs under Presidential Disaster Declaration number FEMA-4309-DR-WA.
- h. For state agencies, the DEPARTMENT will, through interagency reimbursement procedures, transfer payment to the SUBRECIPIENT. Payment will be transferred by journal voucher to Agency No. _____, Accounting Fund No. _____.
- i. Within the total Grant Agreement Amount, travel, sub-contracts, salaries, benefits, printing, equipment, and other goods and services will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.
- j. For travel costs, SUBRECIPIENTS shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive.
- k. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written approval by DEPARTMENT Key Personnel.
- l. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the SUBRECIPIENT consistent with record retention requirements of this Agreement, and be made available upon request by the DEPARTMENT, and local, state, or federal auditors.
- m. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the DEPARTMENT within 45 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the DEPARTMENT.
- n. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the SUBRECIPIENT, its subrecipient or contractor, or any non-federal entity to which the SUBRECIPIENT makes a subaward, and is invoiced by the vendor.

- o. SUBRECIPIENTs shall only use federal award funds under this Agreement to supplement existing funds, and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The SUBRECIPIENT may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

The DEPARTMENT shall provide Advance Payments as provided by FEMA and as required and authorized by law.

4. CLOSEOUT

To initiate close-out, the SUBRECIPIENT is required to certify in writing, by Project Worksheet Number, date completed and total amount expended on the project, completion of the small projects. To initiate close-out of the large projects, the SUBRECIPIENT shall submit certification of completion on a STATEMENT OF DOCUMENTATION/FINAL INSPECTION REPORT form to the DEPARTMENT.

The DEPARTMENT will then complete a site inspection and a financial review of documentation to support the claimed costs. Certifications on small and large projects are due within sixty days following the completion of the project or receipt of the approved Project Worksheet, whichever date is later.

If SUBRECIPIENT is claiming the \$300 allowance for federal indirect costs, the SUBRECIPIENT shall submit certification that they have expended a minimum of \$300 attending the applicant briefing, participating in the exploratory call, attending the recovery scoping meeting, and participating in the exit meeting prior to close-out.

After all of the projects have been certified as complete and approved for closure by FEMA, the DEPARTMENT will forward a final A19-1A State of Washington Invoice Voucher to the SUBRECIPIENT for release of the remaining funds due to the subrecipient for eligible costs, including any retainage previously withheld, and the allowance for federal indirect costs.

5. DOCUMENTATION / REPORTING REQUIREMENTS

For all Advance Payment, the SUBRECIPIENT shall provide documentation and receipts for all costs related to the Advance Payment and provide such to the DEPARTMENT quarterly.

The SUBRECIPIENT is required to retain all documentation which adequately identifies the source and application of Public Assistance funds, including the federal indirect cost reimbursement, for six years following the closure of this disaster grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

The SUBRECIPIENT shall also comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete the FFATA Form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> and return to the DEPARTMENT; which is incorporated by reference and made a part of this Agreement.

Quarterly Reports: The SUBRECIPIENT is required to submit to the DEPARTMENT a quarterly report indicating the status of all their large projects. The status shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project and whether cost under runs or over runs are expected. In addition, the SUBRECIPIENT should note in the comment field any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is received by the DEPARTMENT. The quarterly report will serve as the basis for any FEMA Office of Chief Financial Officer (OCFO) funds reduction.

6. TIME EXTENSIONS

A time extension request is required to be forwarded to the DEPARTMENT by the SUBRECIPIENT for a project prior to the expiration of the approved completion date. If the project is approved and funded after the statutory approval time period for completion, then a time extension request must be submitted to the DEPARTMENT within fifteen days of receipt of the funding package.

In accordance with 44CFR206.204, the DEPARTMENT reserves the right, in its sole discretion, to consider and approve a time extension request after expiration of the approved completion date and

within the DEPARTMENT's statutory extension authority. Requests for time extensions beyond the DEPARTMENT's authority will be considered and approved by FEMA, at their sole discretion.

All determinations made regarding time extension requests will be based on a case by case evaluation of specific factual circumstances.

A time extension request must be in writing and identify the Project Worksheet number, the reason the project has not been completed within the prior approved completion period, the reason the time extension request was not submitted prior to the statutory approval time period (if applicable), a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to submit a time extension request in a timely manner may result in denial of the time extension request, and loss of funding for the related project.

7. PROCUREMENT

The SUBRECIPIENT shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit A.11.

8. SUBRECIPIENT MONITORING:

- a. The DEPARTMENT will monitor the activities of the SUBRECIPIENT from award to closeout. The goal of the DEPARTMENT's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the SUBRECIPIENT shall complete and return to the DEPARTMENT "2 CFR Part 200 Subpart F Audit Certification Form" located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> with the signed Agreement and each fiscal year thereafter until the Agreement is closed, which is incorporated by reference and made a part of this Agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. review of financial and performance reports;
 - ii. monitoring and documenting the completion of Agreement deliverables;
 - iii. documentation of phone calls, meetings, e-mails, and correspondence;
 - iv. review of reimbursement requests and supporting documentation to ensure eligibility and consistency with Agreement work plan, budget, and federal requirements;
 - v. observation and documentation of Agreement related activities;
 - vi. on-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The SUBRECIPIENT is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Part 200 Subpart F, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan. If the SUBRECIPIENT fails to comply with federal or state statutes or regulations, or the terms and conditions of this Agreement, the DEPARTMENT may impose any additional subaward conditions as described in 2 CFR 200.207. If the DEPARTMENT determines that noncompliance cannot be remedied by imposing additional conditions, it may take one or more of the following actions:
 - i. Temporarily withhold cash payments pending correction of the deficiency by the SUBRECIPIENT.
 - ii. Wholly or partially suspend or terminate the subaward to the SUBRECIPIENT.
 - iii. Initiate suspension or debarment proceedings under 2 CFR 180 or recommend such a proceeding be initiated by the federal awarding agency.
 - iv. Withhold further federal awards for the project or program.
 - v. Take any other remedies that may be legally available.

f. The DEPARTMENT agrees to:

- i. Provide technical assistance during all monitoring or evaluation activities. The DEPARTMENT will coordinate and schedule the meetings necessary to conduct and complete all monitoring and evaluation activities.
- ii. Develop the SUBRECIPIENT's project worksheet(s) (PW) and supporting attachments with FEMA and the SUBRECIPIENT's assistance based upon the costs determined to be eligible.
- iii. Submit the SUBRECIPIENT's funding package to FEMA.
- iv. Notify the SUBRECIPIENT when funding approval is received, issue payment per the process described above see Article II, A.4 – Payments, and provide the SUBRECIPIENT with a copy of the approved project worksheet.
- v. Work with the SUBRECIPIENT to resolve any issues identified during the monitoring process.
- vi. Review and respond appropriately to the SUBRECIPIENT's requests for time extensions and changes.

9. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All subrecipients must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

B. FEMA STATE AGREEMENT TERMS AND CONDITIONS

As a subrecipient of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS/FEMA terms and conditions of the Presidential Declaration and the FEMA State Agreement, which are incorporated in and made a part of this Agreement in Appendix F of the Washington State Public Assistance Applicant Manual dated April 21, 2017 (Attachment 4).

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the following terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. "DEPARTMENT" means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the DEPARTMENT, or any of the officers or other officials lawfully representing that DEPARTMENT. The DEPARTMENT is a recipient of a federal award directly from a federal awarding agency and is pass-through entity making a subaward to a subrecipient under this Agreement.
- b. "SUBRECIPIENT" when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the DEPARTMENT. However, the definition of "subrecipient" is the same as in 2 CFR 200.93 for all other purposes. "Monitoring Activities" means all administrative, construction, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- c. "Project" means those actions funded through the Public Assistance Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.
- d. "Investment Justification" means grant application investment justification submitted by the SUBRECIPIENT describing the project for which federal funding is sought and provided under this Agreement. Such grant application investment justification is hereby incorporated into this Agreement by reference.

A.2 ADVANCE PAYMENTS

The DEPARTMENT shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement, except as required under 2 CFR 200.305 for federal grants. SUBRECIPIENT shall not invoice the DEPARTMENT in advance of delivery and invoicing of such goods or services, except as authorized under 2 CFR 200.305.

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA will process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement to SUBRECIPIENT.

Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures.

A.3 AMENDMENTS AND MODIFICATIONS

The SUBRECIPIENT or the DEPARTMENT may request, in writing, an amendment or modification of this Agreement. Modifications may be requested for Grant Agreement end date, budget or scope change. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the DEPARTMENT and the SUBRECIPIENT. No other understandings or agreements, written or oral, shall be binding on the parties.

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The SUBRECIPIENT must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.5 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

The DEPARTMENT relies upon the SUBRECIPIENT's application in making its determinations as to eligibility for, selection for, and scope of funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

A.6 ASSURANCES

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations. In addition, as a SUBRECIPIENT of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS terms and conditions as specified in Appendix F of the Washington State Public Assistance Applicant Manual dated April 21, 2017 incorporated in this Agreement as Attachment 4.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the SUBRECIPIENT certifies that the SUBRECIPIENT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The SUBRECIPIENT shall complete, sign, and return a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form located at <http://mil.wa.gov/emergency-management-division/requiredgrantforms>. Any such form completed by the SUBRECIPIENT for this Agreement shall be incorporated into this Agreement by reference.

Further, the SUBRECIPIENT agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The SUBRECIPIENT certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUBRECIPIENT may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<http://www.sam.gov>) maintained by the federal government. The SUBRECIPIENT also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/>).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUBRECIPIENT hereby certifies that to the best of their knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the SUBRECIPIENT to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the SUBRECIPIENT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the SUBRECIPIENT will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The SUBRECIPIENT and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, as supplemented by Department of Labor regulations (41 CFR chapter 60); Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3); Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5); Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR part 15); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5); Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Title 44 of the Federal Regulations, 2 CFR Part 3002, Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

In the event of the SUBRECIPIENT's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the DEPARTMENT may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion.

The SUBRECIPIENT is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.10 CONFLICT OF INTEREST

No officer or employee of the DEPARTMENT; no member, officer, or employee of the SUBRECIPIENT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the SUBRECIPIENT who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The SUBRECIPIENT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.11 CONTRACTING & PROCUREMENT

a. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract Provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the SUBRECIPIENT under this Agreement must include the following provisions, as applicable:

1) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

The procurement process followed shall be in accordance with 2 CFR Parts 200 and 3002, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the SUB-GRANTEE. All subcontracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

11) Notice of Federal awarding agency requirements and regulations pertaining to reporting.

12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.

13) Access by the DEPARTMENT, the SUBRECIPIENT, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

14) Retention of all required records for six years after the SUBRECIPIENT has made final payments and all other pending matters are closed.

15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

b. The DEPARTMENT reserves the right to review the SUBRECIPIENT procurement plans and documents, and require the SUBRECIPIENT to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 2 CFR 200.326. The SUBRECIPIENT must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the SUBRECIPIENT and DEPARTMENT to make a determination on eligibility of project costs.

c. All sub-contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the SUBRECIPIENT's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the DEPARTMENT or as required to comply with the state Public Records Act, other law or court order.

A.13 DISPUTES

Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the SUBRECIPIENT and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.14 DUPLICATION OF BENEFITS

The SUBRECIPIENT agrees that the funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The SUBRECIPIENT will pursue, and require sub-recipients to pursue, full payment of eligible insurance benefits for properties or any other losses covered in a project under this Agreement. The SUBRECIPIENT will repay the DEPARTMENT any funds provided under this grant agreement that are duplicated by other benefits, funds, or insurance proceeds. The SUBRECIPIENT will also seek recovery against any party or parties whose negligence or other intentional or tortious conduct may have caused or contributed to the expenditures for which these grants funds are provided. The SUBRECIPIENT will repay the DEPARTMENT any funds recovered by settlement, judgment or other court order in an action to recover funds provided by this grant. The SUBRECIPIENT shall notify the DEPARTMENT as early as possible and work in conjunction with the DEPARTMENT and FEMA to ensure appropriate apportionment of any duplicated or recovered payment.

A.15 HAZARDOUS SUBSTANCES

The SUBRECIPIENT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The SUBRECIPIENT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the SUBRECIPIENT has as to the presence of any hazardous substances at the proposed development/construction project site. The SUBRECIPIENT will be responsible for any associated clean-up costs. "Hazardous Substance" is defined in RCW 70.105D.020 (10).

A.16 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the SUBRECIPIENT, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the SUBRECIPIENT, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the SUBRECIPIENT further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the SUBRECIPIENT, its agents, or

employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the SUBRECIPIENT, or SUBRECIPIENT's agents or employees.

Insofar as the funding source, the DEPARTMENT of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.17 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the DEPARTMENT's Authorized Signature and the Authorized Signature of the assigned SUBRECIPIENT Agent or Alternate for the SUBRECIPIENT Agent, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Alternate for the SUBRECIPIENT shall have authority to sign reimbursement requests, certification of project completion, time extension requests, amendment and modification requests, requests for changes to project status, and other requests, certifications and documents authorized by or required under this Agreement.

A.18 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the DEPARTMENT may unilaterally reduce the scope of work and budget or unilaterally terminate or suspend all or part of the Agreement as a "Termination for Cause" without providing the SUBRECIPIENT an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the DEPARTMENT has no obligation to do so.

A.19 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the SUBRECIPIENT.

A.20 NONDISCRIMINATION

The SUBRECIPIENT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.21 NOTICES

The SUBRECIPIENT shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.22 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The SUBRECIPIENT represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the SUBRECIPIENT's performance under this Agreement. To the extent allowed by law, the SUBRECIPIENT further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the SUBRECIPIENT to so comply.

A.23 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUBRECIPIENT.

The SUBRECIPIENT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the State of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.24 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.25 PRIVACY

Personal information collected, used or acquired in connection with this agreement shall be used solely for the purposes of this agreement. SUBRECIPIENT and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law or court order. SUBRECIPIENT agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The DEPARTMENT reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the SUBRECIPIENT through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The SUBRECIPIENT agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the SUBRECIPIENT's unauthorized use, loss or disclosure of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

A.26 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided; however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.27 PUBLICITY

The SUBRECIPIENT agrees to submit to the DEPARTMENT prior to issuance all advertising and publicity matters relating to this Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The SUBRECIPIENT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT. The SUBRECIPIENT may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

The SUBRECIPIENT shall include language which acknowledges the funding contribution of the DEPARTMENT and FEMA to this project in any release or other publication developed or modified for, or referring to, the project.

Publication resulting from work performed under this Agreement shall include an acknowledgement of the DEPARTMENT and FEMA's financial support, by CFDA number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.28 RECAPTURE PROVISION

In the event the SUBRECIPIENT fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of

noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the SUBRECIPIENT of funds under this recapture provision shall occur within 30 days of demand. In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs and expenses thereof, including attorney fees.

A.29 RECORDS AND REPORTS

- a. The SUBRECIPIENT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the SUBRECIPIENT's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The SUBRECIPIENT's records related to this Agreement and the projects funded may be inspected and audited by the DEPARTMENT or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the SUBRECIPIENT with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the SUBRECIPIENT for such inspection and audit, together with suitable space for such purpose, at any and all times during the SUBRECIPIENT's normal working day.
- d. The SUBRECIPIENT shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) year must be followed.

A.30 RECOVERY OF FUNDS

Any person who intentionally causes a condition for which funds are provided under this Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. In addition to its own duty to recover duplicated funds or funds expended due to the intentional or negligent actions of others. SUBRECIPIENT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement.

A.31 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the DEPARTMENT undertakes to assist the SUBRECIPIENT with the project/statement of work/work plan (project) by providing grant funds pursuant to this Agreement, the project itself remains the sole responsibility of the SUBRECIPIENT. The DEPARTMENT undertakes no responsibility to the SUBRECIPIENT, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the SUBRECIPIENT, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the SUBRECIPIENT shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The SUBRECIPIENT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the SUBRECIPIENT in connection with the project. The SUBRECIPIENT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.32 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.33 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities as subrecipients that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a State, local government, Indian Tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

SUBRECIPIENTS that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The SUBRECIPIENT has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200 Subpart F.

The SUBRECIPIENT shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subrecipients or contractors also maintain auditable records.

The SUBRECIPIENT is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The SUBRECIPIENT must respond to DEPARTMENT requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the SUBRECIPIENT all disallowed costs resulting from the audit.

Once the single audit has been completed and includes an audit findings, the SUBRECIPIENT must send a full copy of the audit to the DEPARTMENT and its corrective action plan no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to:

**Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

If Contractor claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT must send a letter identifying this Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to the address listed above.

The DEPARTMENT retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The SUBRECIPIENT shall include the above audit requirements in any subawards.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT's failure to comply with said audit requirements may result in one or more of the following actions in the DEPARTMENT's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.34 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The SUBRECIPIENT, and/or employees or agents performing under this Agreement are not employees or agents of the DEPARTMENT in any manner whatsoever. The SUBRECIPIENT will not be presented as nor claim to be an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, nor will the SUBRECIPIENT make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the SUBRECIPIENT is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the State of Washington in their own right and not by reason of this Agreement.

A.35 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the SUBRECIPIENT shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the SUBRECIPIENT or its staff required by statute or regulation that are applicable to Agreement performance.

A.36 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the SUBRECIPIENT may terminate this Agreement by providing written notice of such termination to the DEPARTMENT's Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the DEPARTMENT, in its sole discretion and in the best interests of the State of Washington, may terminate this Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing to the SUBRECIPIENT. Upon notice of termination for convenience, the DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds. In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.37 TERMINATION OR SUSPENSION FOR CAUSE

In the event the DEPARTMENT, in its sole discretion, determines the SUBRECIPIENT has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the SUBRECIPIENT unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the DEPARTMENT has the right to immediately suspend or terminate this Agreement in whole or in part.

The DEPARTMENT may notify the SUBRECIPIENT in writing of the need to take corrective action and provide a period of time in which to cure. The DEPARTMENT is not required to allow the SUBGRANTEE an opportunity to cure if it is not feasible as determined solely within the DEPARTMENT's discretion. Any time allowed for cure shall not diminish or eliminate the SUBRECIPIENT's liability for damages or otherwise affect any other remedies available to the DEPARTMENT. If the DEPARTMENT allows the SUBRECIPIENT an opportunity to cure, the DEPARTMENT shall notify the SUBRECIPIENT in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the DEPARTMENT, or if such corrective action is deemed by the DEPARTMENT to be insufficient, the Agreement may be terminated in whole or in part.

The DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the SUBRECIPIENT, if allowed, or pending a decision by the DEPARTMENT to terminate the Agreement in whole or in part.

In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Agreement and the replacement or

cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the SUBRECIPIENT: (1) was not in default or material breach, or (2) failure to perform was outside of the SUBRECIPIENT's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.38 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the DEPARTMENT terminates this Agreement, the SUBRECIPIENT shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the DEPARTMENT may require the SUBRECIPIENT to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the DEPARTMENT shall pay to the SUBRECIPIENT the agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the DEPARTMENT prior to the effective date of Agreement termination, and the amount agreed upon by the SUBRECIPIENT and the DEPARTMENT for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the DEPARTMENT, (iii) other work, services and/or equipment or supplies which are accepted by the DEPARTMENT, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. The DEPARTMENT shall have no other obligation to the SUBRECIPIENT for termination. The DEPARTMENT may withhold from any amounts due the SUBRECIPIENT such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT in writing, the SUBRECIPIENT shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the SUBRECIPIENT under the orders and sub-contracts so terminated, in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the DEPARTMENT to the extent the DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the Agreement had been completed, would have been required to be furnished to the DEPARTMENT;
- f. Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the DEPARTMENT may require, for the protection and preservation of the property related to this Agreement which is in the possession of the SUBRECIPIENT and in which the DEPARTMENT has or may acquire an interest.

A.39 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The SUBRECIPIENT shall comply with 2 CFR §200.321 and will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will take all necessary affirmative steps to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The following steps are required by the subrecipient if any contracts with contractors or sub-contractors are entered into under the original contract award:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The SUBRECIPIENT may also set utilization standards, based upon local conditions or may utilize the State of Washington MWBE goals, as identified in. WAC 326-30-041.

A.40 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The SUBRECIPIENT, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

A.41 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

PROJECT WORKSHEET SAMPLE

U.S. DEPARTMENT OF HOMELAND SECURITY FEDERAL EMERGENCY MANAGEMENT AGENCY PROJECT WORKSHEET				O.M.B. No. 1660-0017	
PAPERWORK BURDEN DISCLOSURE NOTICE					
Public reporting burden for this form is estimated to average 90 minutes per response. Burden means the time, effort and financial resources expended by persons to generate, maintain, disclose, or to provide information to us. You may send comments regarding the accuracy of the burden estimate and or any aspect of the collection, including suggestions for reducing the burden to: Information Collections Management, U. S. Department of Homeland Security, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, Paperwork Reduction Project (OMB Control Number 1660-0017). You are not required to respond to this collection of information unless a valid OMB number appears in the upper right corner of this form. NOTE: Do not send your completed form to this address.					
DISASTER	PROJECT NO.	PA ID NO.	DATE	CATEGORY	
F - R					
DAMAGED FACILITY			WORK COMPLETE AS OF:		
			_____ : _____ %		
SUBRECIPIENT		COUNTY			
LOCATION			LATITUDE	LONGITUDE	
DAMAGE DESCRIPTION AND DIMENSIONS					
SCOPE OF WORK					
Does the Scope of Work change the pre-disaster conditions at the site? <input type="checkbox"/> Yes <input type="checkbox"/> No Special Considerations issues included? <input type="checkbox"/> Yes <input type="checkbox"/> No Hazard Mitigation proposal included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is there insurance coverage on this facility? <input type="checkbox"/> Yes <input type="checkbox"/> No					
PROJECT COST					
I	CODE	NARRATIVE	QUANTITY/UNIT	UNIT PRICE	COST
			/		
			/		
			/		
			/		
			/		
			/		
			/		
			/		
			/		
				TOTAL COST	
PREPARED BY		TITLE	SIGNATURE		
SUBRECIPIENT REP.		TITLE	SIGNATURE		



MEMORANDUM

DATE: JUNE 19, 2011
TO: MAYOR AND COUNCILMEMBERS
FROM: MARLA PEÑA, CITY ADMINISTRATOR
RE: RESOLUTION NO. 2017-11 MASTER FEE SCHEDULE AMENDMENT
PARK & REC FEES

I have been approached by a parent who has inquired into starting up the Swim Team program. The parents would run the program, much like they had in the past prior to the City taking it over in 2014. They would run it Tuesday through Friday, 1:00 to 2:30, for four weeks in July. I advised them that they would need to have two certified guards on duty which they would need to pay for.

I would like to recommend we charge a \$10 facility use charge per swim team member. Previously when the Swim Team parents ran the program the City charged \$15 per member for approximately 8 weeks and the City provided a guard. In 2014 the City took over the swim team and set a fee of \$25 then increased it to \$30 in 2015.

I have prepared a resolution to amend the Master Fee Schedule to include a \$10 charge per swim team member if Council so wishes to approve.

Options: 1) Move to approve 2) Do not approve 3) Modify 4) Defer action to a later date

Recommendation: Council move to adopt Resolution No. 2017-11 amending the Master Fee Schedule to provide for a \$10 facility use charge per swim team member.

**CITY OF CONNELL
CONNELL, WASHINGTON
RESOLUTION NO. 2017-11**

**A RESOLUTION OF THE CITY OF CONNELL, FRANKLIN COUNTY,
WASHINGTON, AMENDING SCHEDULE D OF THE MASTER FEE SCHEDULE.**

WHEREAS, the City has adopted a Master Fee Schedule to establish fees that are reflective of the cost of services provided by the City; and

WHEREAS, the City has found it necessary to amend the Master Fee Schedule;

NOW THEREFORE, be it resolved by the City Council of the City of Connell, Franklin County, Washington, as follows:

Section 1. Amendment of Schedule; Schedule D - Parks & Recreation of the Master Fee Schedule is hereby amended and attached to this resolution.

Section 2. Effective Date. This Resolution shall be in full force and in effect for the fees amended in schedule D – Parks & Recreation on June 19, 2017.

ADOPTED by the City Council of the City of Connell and **APPROVED** by the Mayor this _____ day of _____, 2017.

Bruce Blackwell, Mayor

ATTEST:

Rose Courneya, City Clerk - Treasurer

Approved as to form:

Dan Hultgrenn, City Attorney

INTRODUCED: _____

ADOPTED: _____

APPROVED: _____

SCHEDULE D – PARK & RECREATION

City of Connell Pioneer Park Swimming Pool Fees:

<u>Daily Per Session Admission</u>	<u>Fees</u>
Child (age 0-4) – accompanied by paying Adult	No Charge
All other Patrons (Age 5 and older)	\$3.00
 <u>Punch Card Pass (10 Sessions)</u>	 \$ 30.00
 <u>Connell Swim Team Member Charge</u>	 \$ 10.00
 <u>Pool Rental Fee (per hour; 2 hour minimum)</u>	
50 people (3 – Lifeguards)	\$ 90.00
75 people (4 – Lifeguards)	\$ 120.00
100 people (5 - Lifeguards)	\$ 150.00

Slides not included in Pool Rental Fees. Additional Slide Rental Fee is as follows:

Slide Fee is \$30.00 per hour with a 2-hour minimum rental.

Pioneer Park Pavilion Reservation Fees: \$ 10.00 per hour
 Minimum 4 hour rental

Community Center Fees:

Room	Group I	Group II	Group II (4 hours or less)	Group III	Group IV
Health	No Charge	\$50.00	\$50.00	\$75.00	\$50.00
Meeting 1	\$25.00	\$35.00	\$35.00	\$50.00	\$35.00
Meeting 2	\$25.00	\$30.00	\$30.00	\$40.00	\$30.00
A.M. Erickson*	\$100.00	\$200.00	\$150.00	\$250.00	\$150.00
Multi-Purpose*	\$150.00	\$300.00	\$225.00	\$350.00	\$225.00
Kitchen	\$75.00	\$150.00	\$100.00	\$150.00	\$75.00
*Use outside of normal hours is extra \$15.00 per hour					
Deposit (small rooms)	\$25.00	\$30.00	\$30.00	\$50.00	\$30.00
Deposit (large rooms)	Rent Value	\$400.00	\$300.00	\$400.00	Rent Value
Equipment (small rooms)	\$5.00	\$15.00	\$15.00	\$15.00	\$5.00
Equipment (large rooms)	\$25.00	\$50.00	\$50.00	\$50.00	\$25.00
Holding Fee	\$50.00 due at time of reservation				
Alcohol Deposit	\$500.00				



MEMORANDUM

DATE: JUNE 19, 2017
TO: MAYOR AND COUNCILMEMBERS
FROM: MARIA PEÑA, CITY ADMINISTRATOR
RE: JULY 4TH POOL CAN DRIVE

In the past the City has provided free swimming on the Fourth of July and at times we have asked for canned food donations which we then delivered to the Connell Food Bank. I feel that this would be a good practice to continue and ask that you consider a free day for swimming or an entrance fee of a canned food item (a can for each session).

Recommendation: Council make a motion or give consensus to allow for a pool entrance fee of a canned food item for July 4th.



City of Connell

EASTERN
WASHINGTON'S
HARVESTLAND

MEMORANDUM

DATE: JUNE 19, 2017
TO: MAYOR AND COUNCILMEMBERS
FROM: MARIA PEÑA, CITY ADMINISTRATOR
RE: AGREEMENT WITH PUD FOR UTILIZATION OF STREET LIGHT FACILITIES

As you may recall Ben Hooper, Broadband Services Manager for PUD, provided a presentation to Council this past December in regards to the City's needs for broadband, fiber deployment, and how PUD's wholesale broadband worked. Recently Mayor Blackwell and Public Works Director Turner met with staff from PUD to discuss the progress of this project. We now have an agreement for the utilization of the City's street light facilities to install wireless communications equipment.

Recommendation: Council move to approve and authorize the Mayor to sign Agreement No. 9101 between the City of Connell and PUD.



THE POWER IS YOURS

AGREEMENT NO. 9101 BETWEEN

CITY OF CONNELL AND

PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY

**FOR THE UTILIZATION OF STREET LIGHT FACILITIES TO INSTALL WIRELESS
COMMUNICATIONS EQUIPMENT**

Whereas, the City of Connell, hereinafter referred to as the "CITY", and the Public Utility District No. 1 of Franklin County, hereinafter referred to as "DISTRICT", collectively referred to as "the PARTIES" and individually referred to as "PARTY", desire to enter into an agreement under which the CITY will provide access to all Street Lights Facilities located in Connell, Washington for DISTRICT wireless communications equipment access, all as defined herein.

And after due and proper consideration, the sufficiency of which is acknowledged, the PARTIES hereby agree as follows:

Definitions

"Agreement" refers to this Agreement No. 9101.

"Street Light Facilities" refers to all CITY owned street light facilities, including but not limited to poles, masts, fixtures, and power that are located in the City of Connell.

Force Majeure

If a PARTY fails to comply with any of its obligations under this Agreement due to an event over which it has no reasonable control, including, but not limited to, strikes, lockouts, accidents, fire, flood, import or export embargo, war, acts of terrorism or natural catastrophes (a "Force Majeure Event"), then such non-performance shall be excused until the termination of the Force Majeure Event and it shall not be held responsible for any loss or damage which may be incurred by the other as a result thereof.

Hold Harmless

CITY shall protect, hold free and harmless, defend and pay on behalf of the DISTRICT (including its managers, commissioners and employees) all liability, penalties, costs, losses, damage, expense, causes of action, claims, or judgments, (including attorney's fees) resulting from injury or death, sustained by any person (including CITY or CITY's employees) or damage to tangible property of any kind to the extent caused by CITY's or its subcontractor's negligent

performance of this Agreement. CITY's hold harmless agreement shall apply to any negligent act or omission, or willful misconduct whether passive or active, on the part of CITY (its agents, Subcontractors, or employees); except, that this hold harmless/indemnification provision shall not be applicable to injury, death, or damage to property or persons arising from the sole negligence or the willful misconduct of the DISTRICT's managers, commissioners, and employees.

DISTRICT shall protect, hold free and harmless, defend and pay on behalf of the CITY (including its managers, commissioners and employees) all liability, penalties, costs, losses, damage, expense, causes of action, claims, or judgments, (including attorney's fees) resulting from injury or death, sustained by any person (including DISTRICT or DISTRICT's employees) or damage to tangible property of any kind to the extent caused by DISTRICT's or its subcontractor's negligent performance of this Agreement. DISTRICT's hold harmless agreement shall apply to any negligent act or omission, or willful misconduct whether passive or active, on the part of DISTRICT (its agents, Subcontractors, or employees); except, that this hold harmless/indemnification provision shall not be applicable to injury, death, or damage to property or persons arising from the sole negligence or the willful misconduct of the CITY's managers, commissioners, and employees.

In any and all claims against a PARTY by any employee of the other PARTY or its Subcontractor, the indemnification and hold-harmless obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the PARTY under worker's compensation acts, disability benefit acts, or other employee benefit acts, **AND CONSULTANT SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY UNDER SUCH ACTS. CONSULTANT ACKNOWLEDGES THAT THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.**

Limited Liability

Notwithstanding anything to the contrary in this Agreement, neither PARTY makes any warranties of any kind, either express or implied, and each PARTY specifically disclaims all implied warranties to the maximum extent permitted by applicable law. Except for any claims involving the gross negligence or willful misconduct of a PARTY, neither PARTY shall be liable to the other PARTY, whether in contract, tort or otherwise, for any indirect, incidental, consequential, special or punitive damages, or lost profits (even if such damages are foreseeable, and whether or not a PARTY has been advised of the possibility of such damages).

Street Light Facilities for Wireless Communications Equipment Access

Once established and agreed upon by the PARTIES, the location of the Street Light Facilities and the DISTRICT owned wireless communications equipment shall not be moved to a new location without the mutual consent of both PARTIES. DISTRICT may not assign its interest in this Agreement without the permission of the CITY. The CITY agrees to not interfere with the DISTRICT's wireless communication equipment attached to the CITY's Street Light Facilities, and the DISTRICT agrees to not interfere with the CITY's Street Lights Facilities.

DISTRICT shall use the services of a licensed electrician, and shall pay for all charges related to extending a single 5 amp 120 volt circuit from the existing secondary low voltage

electric service serving the CITY facility to be installed for the wireless communications equipment. DISTRICT electrical requirements exceeding a single 5 amp 120 volt circuit shall be met by DISTRICT acquiring a separately metered electric service.

DISTRICT's Responsibilities With Regard to Installation, Repairs, and Maintenance

DISTRICT shall be solely responsible for all costs and expenses associated with the permitting, installation, and construction of the wireless communications equipment and its operations. DISTRICT shall be responsible for the repair and maintenance of the wireless equipment cabinet, antenna, cabling, all other wireless equipment, and any other associated equipment owned by the DISTRICT.

DISTRICT will label all equipment with company name and phone number; and provide photo documentation as an Exhibit to this Agreement of its installed equipment within 30 days of installation.

Access Rights With Regard to Installation, Repairs, and Maintenance

DISTRICT will be allowed to access all Street Light Facilities at any time to perform maintenance and upgrades to its wireless communications system.

Strict Performance

Either PARTY's failure to enforce or insist upon strict performance of any provision of this Agreement or to exercise any of their rights or remedies under this Agreement or otherwise by law will not be construed as a waiver or relinquishment to any extent of the PARTY's right to rely on any such provision, right, or remedy in that or any other instance. Neither the course of conduct between PARTIES nor trade practice will act to modify any provision of this Agreement.

Severability

If any provision of the Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the Parties that all other provisions of this agreement be construed to remain fully valid, enforceable and binding on the PARTIES.

Modifications

This Agreement constitutes the complete and exclusive Agreement between DISTRICT and the CITY with respect to the subject matter hereof, and supersedes all prior oral or written understandings, communications or agreements not specifically incorporated herein. This Agreement may not be modified except in a writing duly signed by an authorized representative of DISTRICT and the CITY.

Term

The term of this Agreement begins upon signature of all PARTIES and terminates ten (10) years from such date. This period may be extended by mutual agreement for an additional ten (10) year period by addendum.

Termination

The PARTIES acknowledge this wi-fi project at the CITY is a DISTRICT pilot project and as such this Agreement may be terminated by either PARTY by providing advance written notice to the other PARTY at least 180 days in advance of the Agreement termination date. Upon termination by either PARTY, DISTRICT shall pay for all expenses incurred to remove the wireless communications equipment access site and all associated equipment and gear.

Assignability

This Agreement may be assigned to the purchaser if the CITY-owned Street Light Facilities located in the City of Connell, WA are sold to a third party. Notice of any such assignment or transfer shall be furnished promptly to DISTRICT.

Successors and Assigns

Subject to the provisions hereof pertaining to assignment, the covenants and terms of this Agreement shall be binding upon the heirs, legal representatives, successors and assigns of the PARTIES hereto.

Cancellation

In the event interference and/or technical problems occur with regard to the DISTRICT wireless communication equipment located on any Street Light Facilities, DISTRICT will resolve the issue within 30 days. In the event that interference and/or technical problems cannot be resolved, the CITY may request that the wireless communications equipment be removed or relocated from that specific location and DISTRICT shall pay for all expenses incurred to remove the wireless communications equipment and associated equipment, and return all used portions of the CITY property to its original condition prior to installation of the wireless equipment.

Dispute Resolution

Any disputes arising under this Agreement shall be resolved through arbitration except as may be otherwise expressly provided by Washington law. During the process of dispute resolution the Parties shall continue to perform under the terms of this Agreement. Prior to any arbitration, the Parties agree to consult about any differences they may have arising from this Agreement. If the Parties are unable to agree upon a resolution within ten (10) days, the Parties shall engage in arbitration. The Parties agree to arbitrate their dispute through the selection of a mutually acceptable neutral arbitrator. Written notice requesting arbitration shall name a proposed arbitrator. Consent to the selection of an arbitrator shall not be unreasonably withheld.

Upon receipt of written notice requesting arbitration, the receiving Party shall, in writing and within ten (10) days after the receipt of such notice, either agrees to the proposed arbitrator or rejects the proposed arbitrator and proposes an alternate arbitrator. If the proposed alternate arbitrator is rejected by the Party requesting arbitration, the Parties will notify the Presiding Judge of Franklin County Superior Court for the State of Washington and request that a qualified arbitrator be appointed.

The arbitrator shall apply applicable provisions of Washington law, including those related to arbitration, in reaching a determination, which will be rendered within sixty (60) days after the arbitrator is selected by the Parties or appointed. The arbitrator shall issue a written statement to the Parties setting forth in reasonable detail the reasons for the determination.

The determination by the arbitrator shall be binding upon the Parties absent any appeal, which may proceed if there is an outstanding issue or mistake of law. Each Party shall bear its own costs and expenses for the arbitration, including attorney's fees and costs incurred in the arbitration for consultants and witnesses. The Parties shall share equally the cost of the arbitrator.

Notices

All notices or demands of any kind required or desired to be given hereunder shall be in writing and shall be deemed delivered 72 hours after depositing the same into the United States mail, first class, postage prepaid, directed to the PARTY at the address set forth after

its signature at the end of this Agreement, or to such other address as one PARTY may give by notice to the other.

Governing Law

This Agreement shall be governed by the laws of the State of Washington and the Parties consent to jurisdiction by the Franklin County Superior Court in the State of Washington.

IN WITNESS WHEREOF, the PARTIES hereto have signed this Agreement:

CITY OF CONNELL

PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY

By: _____

By: _____

Honorable Bruce Blackwell
Mayor – City of Connell

Victor Scarano
Director of Administrative Services

Date: _____

Date: _____

Mailing Address:

Mailing Address:

PO Box 1200
Connell, WA 99326-
1200

Broadband
FRANKLIN PUD
PO Box 2407
Pasco, WA 99302



MEMORANDUM

DATE: JUNE 19, 2017
TO: MAYOR AND COUNCILMEMBERS
FROM: MARIA PEÑA, CITY ADMINISTRATOR
RE: WA STATE DEPT OF TRANSPORTATION AMENDMENT TO AGREEMENT

Unfortunately there is not much that I can provide as an update on the Rail Interchange Project. BNSF and WA State DOT are continuing to work on an agreement, the project is on hold until such an agreement is signed. Initially it had been expected that an agreement would have been signed by now and construction would have started to take place. That is not the case and I can not honestly tell you when that is expected to happen.

I did receive an initial draft of the Cost Benefit Analysis and that was forwarded to BNSF as there was more information that was needed to be completed.

The attached amendment to the agreement is for money that was allocated to the City in the State's 2015-2017 biennium to complete the project design portion of the project. The City has only spent \$2,123.85 of the \$600,000 that was allocated. It was determined that this money would be best spent by using it to pay for engineering that would be completed by BNSF's engineers and therefore the City did not continue to use HDR for the engineering.

This amendment is needed to close out the City's hold on these funds and would allow BNSF to acquire the funding.

Recommendation: Council move to approve Amendment No. 1 between the City of Connell and the State of Washington agreement GCB2372.

AMENDMENT NO. 1

Between

The City of Connell

And

THE STATE OF WASHINGTON

AGREEMENT GCB 2372

This AMENDMENT No.1 ("AMENDMENT") is between the City of Connell ("GRANTEE") and the STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION ("STATE") and amends the Agreement for the Project GCB 2372 ("AGREEMENT") effective April 11, 2016, between the PARTIES.

WHEREAS, the PARTIES are authorized by Section XXVIII, "AMENDMENT," of the original AGREEMENT to amend the terms and conditions of the original AGREEMENT;

WHEREAS, the Scope of Work as described in Exhibit A has been completed as much as possible by the GRANTEE, with the remaining work being completed by the BNSF Railway Company; and

NOW THEREFORE, the PARTIES hereto agree to amend the AGREEMENT as follows:

1. In Title Block, revise Not to Exceed amount to "Two Thousand One Hundred Twenty Three Dollars and Eighty Five Cents (\$2,123.85)".
2. In Section III, paragraph 3, sentence 1, delete the "\$600,000.00" reference and replace it with "\$2,123.85".
3. In Section III, paragraph 14, sentence 1, delete the "8/10/17" reference and replace it with "10/31/16".
4. Except as expressly modified herein, all other terms and conditions of the original Agreement GCB 2372 shall remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES have executed this AMENDMENT NO. 1 to AGREEMENT GCB 2372 as the date last signed below by the PARTIES.

STATE OF WASHINGTON
Department of Transportation

By: _____
Ron Pate, Director
WSDOT Rail, Freight, and Ports Division

Date: _____

By: _____
Bruce Blackwell, Mayor
City of Connell

Date: _____

By: _____
Scott Lockwood
Assistant Attorney General
State of Washington

Date: _____

Any modification, change or revision to this AGREEMENT requires the further approval as to form by the Office of the Attorney General.



City of Connell

**EASTERN
WASHINGTON'S
HARVESTLAND**

FIRE CHIEF CONTRACT NEGOTIATION, JUNE 2017.

DATE: 06/14/2017
TO: MARIA PENA, CITY OF CONNELL, CITY ADMINISTRATOR
FROM: CHRIS SCHULTE, FIRE CHIEF, CITY OF CONNELL FIRE DEPARTMENT
RE: Negotiation of Contract for Chris Schulte, Fire Chief, City of Connell Fire Department.

The current Fire Chief contract for the City of Connell Fire Department expires in July of 2017. The following contains recommended alteration to the current contract. These suggestions have been documented here for the consideration by the City of Connell for inclusion in the next contract period.

Suggested changes to existing contract language

Page 2 of 6 – Section 5. Salary B. – Employee shall reside within a reasonable response distance from City of Connell, so defined where the distance allows the Employee to reach the City of Connell Fire Station within ~~ten~~ forty five minutes from the Employee's residence under normal driving conditions and obeying all traffic laws.

Page 4 of 6 – Section 14. Uniform Allowance – City shall provide Employee with fire service uniforms, outerwear, badges/insignia to be worn during the regular workday and when representing the City at official functions and or meetings. The first year uniform allowance will be budgeted not to exceed \$1,500.00 and the subsequent annual service uniform allowance will be budgeted not to exceed ~~\$300.00~~ \$1,000.00. Any portion of allowance not used in a given budget year shall not accumulate to the next budget year.

Suggested new language to be added to existing contract.

Add to Section 16. Other Terms and Conditions of Employment (?)

Employee is responsible to develop a successional employment plan that will be utilized to advertise for, evaluate, and select the next Fire Chief. Plan must follow all City of Connell employment practices as stated in the Personnel Policy of the City of Connell. Plan must be approved by City Administrator prior to any implementation actions occurring. Upon selection, placement and delegation of authority to new chief, Employee will provide and be compensated for orientation and support to the newly selected chief. This overlapping orientation/support period will last 2 months after official start date of new chief and will be compensated at Employee's normal monthly salary rate.

Chris Schulte, Fire Chief/City of Connell

Fire Chief Contract Extension

WHEREAS, the agreement made and entered into on the 1st day of February, 2011, by and between the City of Connell, a municipal corporation of the State of Washington hereinafter called "Employer" as party of the first part, and Dana Christopher Schulte; and

WHEREAS, subsequent contract extension agreements have been approved; and

WHEREAS, it is the desire to make changes to the existing agreement.

NOW, THEREFORE, it is agreed:

1. Section 5. Salary

B. Within 90 days of the execution of this agreement, employee shall reside within a reasonable response distance from City of Connell, so defined where the distance allows the Employee to reach the City of Connell Fire Station within forty five minutes from the Employee's residence under normal driving conditions and obeying all traffic laws.

2. Section 14. Uniform Allowance

City shall provide Employee with fire service uniforms, outerwear, badges/insignia to be worn during the regular workday and when representing the City at official functions and or meetings. The first year uniform allowance will be budgeted not to exceed \$1,500.00 and the subsequent annual service uniform allowance will be budgeted not to exceed \$1,000.00. Any portion of the allowance not used in a given budget year shall not accumulate to the next budget year.

3. Section 16. Other Terms and Conditions of Employment

B. Employee is responsible to develop an employment plan that will be utilized to advertise for, evaluate, and select the next Fire Chief. Plan must follow all City of Connell employment practices as stated in the Personnel Policy of the City of Connell. Plan must be approved by City Administrator prior to any implantation actions occurring. Upon selection, placement and delegation of authority to new chief, Employee will provide and be compensated for orientation and support to the newly selected chief. This overlapping orientation/support period will last 2 months after official start date of new chief and will be compensated at Employee's normal monthly salary rate.

1. Termination. This Agreement shall terminate June 30, 2020, unless extended by the mutual written agreement of the parties.

DATED this _____ day of _____, 2017.

CITY OF CONNELL, a Municipal Corporation

By: _____
Mayor Bruce Blackwell

ATTEST:

Clerk-Treasurer

Dana Christopher Schulte

By: _____